EXHIBIT D

	Page 1
1	ARBITRATION
2	AMERICAN ARBITRATION ASSOCIATION
3	THE NEW YORK TIMES COMPANY,
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5	A Petitioner,
6	
	V.
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	NEWSPAPER and MAIL DELIVERERS'-PUBLISHERS'
8	PENSION FUND,
9	Claimant.
	X
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12	ARBITRATION
13	New York, New York
14	Tuesday, February 10, 2015
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17	REPORTED BY: BARBARA R. ZELTMAN
18	Professional Stenographic Reporter
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20	Job Number: 90057
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1	ARBITRATION	1	ARBITRATION
2	ARDITRATION	2	ARBITRATION APPEARANCES:
3		3	MITERMINOLS.
	February 10, 2015	4	ARBITRATOR: MARK L. IRVINGS, ESQ.
4	10:13 a.m.	5	24 Elba Street
5	10.13 willi	6	Brookline, Massachusetts 02446
6	Arbitration proceedings held at American	7	,
7	Arbitration Association, 120 Broadway, New York, New	8	
8	York, before BARBARA R. ZELTMAN, a Professional	9	JONES DAY
9	Stenographic Reporter and Notary Public within and	10	Attorneys for Petitioner
10	for the State of New York.	11	51 Louisiana Avenue, N.W.
11	for the state of New York.	12	Washington, D.C. 20001
12		13	BY: EVAN MILLER, ESQ.,
13			MIGUEL EATON, ESQ., and
14		14	YAAKOV ROTH, ESQ.
15		15	
16		16	COULT TE DOTAL A ZARRA
17		17	SCHULTE ROTH & ZABEL
18		18 19	Attorneys for the Claimant
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20		21	New York, New York 10022
21		21	BY: RONALD RICHMAN, ESQ.,
22		22	MAX GARFIELD, ESQ., and ADAM GARTNER, ESQ.
23		23	ADAM GARTNER, ESQ.
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Page 6 Page 7 1 1 **ARBITRATION ARBITRATION** 2 2 in connection with Pension Fund aggregates wages paid and makes pension 3 3 contributions and that it neither contributions on a percentage of that. 4 4 calculates nor reports shifts in Mr. Claffee will also provide 5 5 connection with its Pension Fund detailed testimony on how The Times makes 6 6 contributions to the Welfare Fund. contributions. 7 And that practice has been And this is important, 8 8 consistent as far back as anyone can Mr. Arbitrator, because as you know the 9 9 Fund's brief indicates that The Times' recall. 10 10 Mr. Claffee will testify that the practices in connection with Welfare Fund 11 11 contributions supports its position that payroll process at The Times was and is 12 12 to aggregate various categories of wages CBUs equal shifts. 13 13 paid to NMDU union members multiplied by Mr. Claffee will testify that in 14 14 8 percent and pay the resulting amount to connection with the Welfare Fund, 15 15 the Pension Fund. The Times similarly makes contributions 16 16 In light of this practice, primarily based on a percentage of wages 17 The Times in fact routinely makes 17 but also makes supplemental contributions 18 18 contributions to the Pension Fund based on shifts. 19 19 And more specifically the 1981 relating not just to wages paid for 20 actual shifts worked but also to payments 20 collective bargaining agreement, the same 21 21 to employees out on Workers' Comp. and collective bargaining agreement that 22 22 for bereavement pay, holiday pay, created the language at issue here, 23 23 vacation pay, none of which involves contains a provision for Welfare Fund 24 24 shifts being worked. contributions very similar to the pension 25 25 In all these events, The Times provision. Page 8 Page 9 1 1 **ARBITRATION ARBITRATION** 2 And Mr. Claffee will testify that 2 Fund. And Mr. Claffee will testify that 3 3 for these shift-based contributions, The Times treats this Welfare Fund 4 4 The Times indeed reports shifts to the contribution provision just like the Pension Fund provision. It aggregates 5 5 Welfare Fund in contrast to its reporting 6 6 eligible wages paid, multiplies by a practice for pension. 7 7 And these practices we believe are contribution rate and contributes the 8 8 resulting amount to the Welfare Fund. important for at least two reasons: 9 9 But over time, The Times and the First, the Pension Fund has accepted 10 10 The Times' contribution and reporting Union have also agreed to supplemental 11 11 contributions to the Welfare Fund. In practice for years. Pension Fund and 12 12 the late '80s, they agreed to a 47-cent Welfare Fund apparently share the same 13 13 per shift contribution in lieu of a COLA personnel, and it appears that such 14 14 payment to members. personnel took it upon themselves to take 15 15 the shift information that The Times And in another memorandum of 16 16 agreement, The Times and Union agreed provided under the Welfare Fund and 17 17 that employees must make pretax transfer that data to the Pension Fund 18 18 contributions to the Welfare Fund based side of the ledger. 19 19 on a \$3.67 amount per shift. Second, this is important because 20 20 it debunks one of the Fund's key So when the bargaining parties 21 21 wanted to make clear that contributions arguments as to why CBUs equals shifts. 22 22 You will hear testimony that are to be made on a dollar per shift 23 23 basis, they knew how to say it. The Times and the Union also entered into

a memorandum of agreement providing that

the Union could on occasion direct a

They said it in connection with the

supplemental contributions to the Welfare

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portion of Pension Fund contributions to the Welfare Fund, and the Pension Fund argues that this diversion -- they called it reapportionment in the brief -- shows that CBUs equals shifts.

In fact, it demonstrates the opposite.

Indeed, the Union has over time directed that instead of the 8 percent contribution to the Pension Fund, only 6 percent or 6.5 percent would be contributed to pensions and the additional 2 percent or 1.5 percent of wages be paid to the Welfare Fund.

What The Times did on those occasions was add that additional nonshift-based percentage of wages amount to its nonshift-based Welfare Fund contribution.

And thus the diversion protocol between The Times and the Union was consistent with The Times making contributions to both funds on the basis of percentage of wages, not shifts.

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The Fund also contends that the result of a 2010 payroll audit of the Times affiliate C & S supports its position.

But as you'll see during the course of the hearing, the manner in which the Fund's outside auditor characterized pension contributions is at best for the Fund inconsistent. And more importantly when the auditor explained in his final audit report how he had recalculated the contributions, he said that he multiplied qualifying earnings by the applicable percentage thus directly confirming The Times' own approach.

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And as for the Pension Fund's own practices, the evidence will show that they can be reasonably and objectively described as inconsistent.

As I mentioned, the Pension Fund has historically consented to The Times practice of not reporting shifts or contributing on behalf of shifts.

And in certain correspondence with

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The Times and other employers, the Fund has characterized the contribution obligation as a percent of wages.

Moreover, and quite importantly, the Fund's own actuary has certified each year for which we can find records that the contribution rate is consistent with our theory a percent of wages.

To be sure, Mr. Arbitrator, after The Times was assessed liability and after it initiated this arbitration, the actuary changed her verbiage.

But obviously a reasonable person would construe the phrase which was previously used "8 percent of wages" as stating a contribution formula based on just that, a percent of wages and not shifts.

The only practice of the Fund in which it has counted shifts as CBUs is prior withdrawal liability assessments. But most of those are roughly 20 years old. We do not know what all the relevant collective bargaining agreements

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said, nor how those affected companies reported their contributions.

And The Times did not know of the construction of CBUs contained in those distant withdraw liability assessments, and indeed where the Pension Fund has been consistent, Mr. Arbitrator, is in conveying to The Times that CBUs were wages.

In that regard and thus in any event, the Fund should be estopped from applying CBUs as shifts retroactively.

You will hear testimony from Terry Hayes, Times senior VP for Labor Relations, that The Times has been sensitive to its withdrawal liability prospects in connection with this Fund and could have taken steps to prevent a partial withdraw had the Fund clearly made known its view CBUs equals shifts.

But the Pension Fund has, even if not intentionally, misled The Times about what constitutes CBUs.

First in 2009 and 2010, The Times

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sought estimates of its withdrawal liability and specifically requested CBU information.

ERISA expressly requires that such request be responded to within six months of receipt but both the 2009 and the 2010 requests went unanswered in clear violation of ERISA.

When the Fund finally responded to a third request in mid 2012, the Fund based CBUs not on shifts but on wages earned.

And the Fund repeated this course of action in connection with a fourth New York Times request for an estimate.

On July 18, 2013, less than 60 days before it made the assessment in this case, the Fund sent The Times an estimate of withdrawal liability in which CBUs were again based on wages, not shifts.

So these estimates, when they were provided, are part of what we believe is a consistent pattern of conduct by the Fund indicating to The Times that CBUs

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are wages.

The Times, as you will hear, was paying close attention to the issue of CBU levels, and had The Times known of the Fund's position it could have and would have undertaken bona fide business practices and conduct to address that contention.

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Now let me turn to the next issue, second issue, application of the Segal blend.

By employing the Segal blend method, the plan used a discount rate to value Pension Fund liabilities that was lower than the actuaries best estimate of 7.5 percent for the plan's anticipated future investment returns.

And it's that 7.5 percent best estimate that the actuary used for funding purposes.

The Times' position on this issue was simple. Although ERISA might not expressly contain a provision requiring a plan to use the same investment return

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assumption for valuing liabilities for withdrawal liability as it does for funding, the relevant structure of the statutory scheme does indeed legally require it.

And the Supreme Court in the Concrete Pipe case so held.

Moreover, later today you will hear testimony from The Times' actuarial expert Darren French who will testify that under accepted actuarial principles as well.

When an actuary certifies that the anticipated future experience of a pool of assets is 7.5 percent, actuarial principles do not allow that actuary to turn around and hypothesize a different. more conservative set of assets in order to derive a lower discount rate to value liabilities for the withdrawing employer.

And that was precisely one of the many issues that the Supreme Court addressed in Concrete Pipe.

The Court in that case was asked to

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determine whether the withdrawal liability scheme, which allows the fund in the first instance to calculate unfunded vested benefits and then requires the employer to bear the burden of proof in overturning that calculation, satisfies procedural due process.

The Court said that the statute did satisfy due process, but Mr. Arbitrator, a linchpin in that finding was its judgment that actuaries have to use the same assumptions for funding as for withdrawal liability, especially the investment return assumption which, by the way, the Court characterized as, quote, the critical assumption, closed quote, in calculating unfunded vested benefits.

The Court recognized that in the absence of such a constraint actuaries and the multiemployer plans they serve might be pressured to act unfairly toward withdrawing employers. Requiring uniformity in use of the investment

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His theory is that because withdrawal liability is static, that is, you know, once determined it never changes --

ARBITRATOR IRVINGS: Two-minute warning.

MR. MILLER: Based on future -because it's static, based on future
investment performance or it never
changes based on future fund
performance, the withdrawing employer
is not affected by actual later
performance.

Kra contends as an economic principle that the value to the withdrawing employer of giving up any future upside performance above a risk-free rate equals the market value of the withdrawing employer being immunized from future downside performance risk, below a risk-free rate.

As an economic matter, there's some logic to Kra's approach, but that's simply not how Congress structured this

ARBITRATION

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return assumption said the Court, quote, limits the opportunity an actuary might otherwise have to act unfairly downward the withdrawing employer, closed quote.

In the current low interest rate environment, use of the Segal blend impacts The Times withdrawal calculation by more than 33 percent. And such a wide impact demonstrates precisely the act of unfairness to the withdrawing employer that the Supreme Court was concerned about

Now, the Fund for its part intends to use as its expert Dr. Ethan Kra.

Dr. Kra, by the way, believes that the Segal blend method is an incorrect approach to calculating withdrawal liability in that it does not go far enough.

Dr. Kra argues that a so-called risk-free rate, akin to treasury bonds or high-grade corporates, should be used to value the withdrawing employer's share of unfunded vested benefits.

Page 20

Page 21

Page 19

ARBITRATION

scheme and it's not how the Concrete Pipe court interpreted it.

In that regard and finally on Page 25 of the brief, the Fund contends that the reduction in overall contributions caused by The Times and the newspaper industry shrinkage generally makes valuing withdrawal liability at lower rates, at risk-free type rates proper.

It may well be the case that these are causes for concern for this Fund, but if so, the Fund should lower its investment return assumption from 7.5 percent and take less risk.

That will mean higher contributions from remaining contributors and potential tough slog with the Union to negotiate give-ups to allow those higher contributions.

Indeed, it's worth mentioning to you, Mr. Arbitrator, that The Times does remain a contributor to this Fund. After all, it's just a partial withdrawal. So

ARBITRATION

this recommendation therefore also affects The Times' interests.

But what the Fund cannot do is on the one hand estimate to the best of its actuary's ability that its assets will return 7.5 percent over time and on the other say that as to the withdrawing employer whose contributions will be invested just like any other contributor, for you we'll pretend that your liability contributions will be invested more conservatively in the context of the ERISA statute. That's unlawful and threatens due process.

Our third issue will, per our agreement, be taken up in briefing.

Thank you.

ARBITRATOR IRVINGS: Fine.
OPENING STATEMENT BY MR. RICHMAN:

I'm going to take to heart, Mr. Arbitrator, what you told the parties on the telephone, that you had read the briefs, that you expected only very short comments with respect to the issues so

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ARBITRATION

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that's what I'm going to stick to.

So what's really interesting about The New York Times' opening is that you didn't hear anything about the language in the collective bargaining agreement, and in fact you didn't hear anything about the language in the collective bargaining agreements. And the reason for that is pretty simple.

The starting point with respect to this analysis is the collective bargaining agreement. It's not the ending point as I'll address, but it is the starting point.

And when you read the language in the collective bargaining agreement. which I'm sure you've read already so I won't repeat it, it makes clear that the contributions are being made per shift for each shift worked.

In a collective bargaining agreement between the Union and City and Suburban Delivery Systems, it's C & S that's referred to in the papers, that

ARBITRATION

contains other language which really brings out the point.

And what it talks about is the wholesaler, which is C & S, shall contribute to the plan on behalf of such apprentice for each plan year thereafter a full shift contribution at the high scale rate, a full shift contribution. That is not the same language as The New York Times contract, but it does focus on shifts.

Page 23

Now, The New York Times has been making this argument about past practice with respect to the Fund and talking about contribution rate.

And we've addressed this in our brief, so I'm not going to go into any detail about this. But the fact of the matter is that a contribution rate is different than a contribution base unit.

And one Court in the Second Circuit has recognized; that's the only Court that I know that has addressed that specific issue.

Page 24

ARBITRATION

The contribution rate is 8 percent of some number. The contribution base unit is shifts.

Now, the language in The Times collective bargaining agreement also talks about contributions being made when an employee becomes eligible for Workers' Compensation benefits.

And you are going to hear testimony from the Fund's auditor, Mitchell Lewis, that the way that worked in practice is because it generally took some time for somebody to qualify for Workers' Compensation that no contributions would be made for that individual, and then when they got Workers' Comp., there would be contributions made for all the shifts missed.

And what is also the case, there is even a document from 2001 written by James Baker, the director of Labor Relations of The New York Times, confirming this practice of contributing to the Pension Fund specifically for

Page 25

ARBITRATION

shifts on behalf of someone entitled to Workers' Compensation.

The fact of the matter is that The New York Times has in fact not been providing the Fund with information with respect to shifts.

It was easy for the Fund office, for the same office who does the Welfare and the Pension contributions, to be able to take the Welfare reports and use that shift information.

The fact of the matter is that, as you will see from the testimony that we're going to offer, that it didn't -the amount contributed can be arrived at two different ways. And the same result occurs whether you talk about 8 percent of wages up to five shifts or whether you talk about 8 percent of shifts compensation, compensation of shifts -in shifts up to five shifts.

Now, what the Fund has done in every single assessment is choose based on not only on the collective bargaining

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ARBITRATION

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agreement but its own determination, which it has a right to make, to view contributions being based on shifts. It has had that longstanding practice.

And in all of the audit reports that we will show you, which were shared in fact with the trustees including during the time that Mr. Haves was a trustee as well as his predecessor from The Times, there is language in every audit report that indicates the contribution base unit is shifts.

Nobody from The Times ever raised a question about this issue.

We will also be offering testimony from John Urbank, who is a Segal consultant, and you will see a practice that every time that Segal was asked to do a withdrawal liability assessment or estimate, there was a request from Segal for contribution base unit, i.e., shift information

In the earlier years, that information was provided over and over

ARBITRATION

and over again. And the estimates -- the two estimates for The New York Times, that wasn't provided.

And the Segal actuary, without that information, knowing that what she was doing was an estimate, did an estimate and put a note on the bottom of the page on the schedule that I will agree is cryptic. I don't really know what it means, but she is an actuary and -- but it was an estimate.

And the fact of the matter is that The Times complains about not getting information from the Fund, but they have trustees, a trustee on the Fund.

That trustee went to trustee meetings. That trustee had access to the lawyers. One of the lawyers to the Fund, one of whom was Neal Schelberg who comes from the Proskauer firm. The Proskauer firm also represented The New York Times, sometimes at the same time that Neal Schelberg represented the Fund with both parties representing each other in

Page 28

ARBITRATION connection with the Fund.

It was very simple for Mr. Hayes or anyone else from The Times to reach out to the appropriate parties and get an answer if they really wanted an answer, but apparently they did not.

I'm just going to take the rest of the time to talk about the presumption issue because that was addressed in The Times' brief and it was not addressed in ours.

What The Times does is cite a series of cases and says, uh-huh, the presumption doesn't apply to collective bargaining agreements.

And those cases involved a collection of contributions, contributions, delinquent contributions.

Those are not subject to the provision in ERISA 4221 that provides the standard for determining whether to uphold a withdrawal liability determination. And I won't go into depth about the standard, but the standard

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ARBITRATION

simply is that the presumption is with the Fund, and The Times can only prevail to the extent it shows that the Fund's determination on the contribution base unit issue was unreasonable or clearly erroneous. That's what the statute says.

Lastly, I'm going to turn to this issue which first came up in one of our discovery calls, and actually The Times has furthered this in an affidavit that Mr. Haves has submitted in connection with The Times' brief as well as The New York Times' own brief in this matter

And that is The New York Times admits when they closed C & S, they focus on how much they needed to contribute to the Pension Fund to avoid a partial withdrawal.

What they're really complaining about here with respect to the information they say they couldn't get from the Fund is that they're really happy -- unhappy that they focus on total wages as opposed to shifts when they did

Page 30	Page 31
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1 ARBITRATION	1 ARBITRATION
their calculations of whether a partial	avoid a partial withdrawal.
withdrawal would occur.	And we are ready to proceed.
4 And so if you boil their complaint	4 ARBITRATOR IRVINGS: Okay.
down to its essence is they are unhappy	5 Thank you.
with the Pension Fund because the Pension	6 MR. MILLER: Mr. Arbitrator,
Fund they say didn't provide them the	can we bring in the first witness?
8 correct information so they could avoid	8 ARBITRATOR IRVINGS: Yes,
or evade withdrawal liability.	9 please.
That, to me, is quite a novel	MR. MILLER: Mr. Arbitrator, I
concept.	$\frac{11}{10}$ do want to raise the issue of
The New York Times actually says in	sequestration.
its prehearing brief that had The Times	We've assumed sequestration, but we
been aware of the Fund's position, it	do have a witness who is going to go on
could have prevented shifts from falling	later on today, Mr. Terry Hayes, who is
below the 70 percent threshold.	also a representative of The Times.
17 I've never seen anyone make an	And, Ron, if you don't seriously
avoid or evade admission of that nature	object, we would like him to attend just
ever. People don't usually say that's	as you apparently have a representative
what they're doing.	20 here.
But that is what The Times has said	MR. RICHMAN: We have a
is, look, if you'd give me what I think	representative here but not a
was the correct information as opposed to	representative who is going to testify.
so-called misleading me, I would have	MR. MILLER: I understand. MR. RICHMAN: And we do object
just manipulated my contributions to	MR. RICHMAN: And we do object
Page 32	Page 33
Page 32	Page 33
¹ ARBITRATION	1 ARBITRATION
ARBITRATION because I think there will be overlap	1 ARBITRATION 2 agreement that in connection with the
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1	ARBITRATION	1	ARBITRATION
2	THE WITNESS: C-L-A-F-F-E-E.	2	Q And can you tell us in general
3	BY MR. ROTH:	3	terms what your duties are as senior payroll
4	Q Where are you employed,	4	manager?
5	Mr. Claffee?	5	A Generally, I oversee the payment to
6	A I currently work at the New York	6	all employees, their withholdings and make
7	Times Shared Service Center.	7	sure they get the appropriate amount into
8	Q And what is the Shared Service	8	their net pays, and handle the payments to
9	Center?	9	the vendors for the accounts payable side.
10	A The Shared Service Center is a	10	Q And more particularly with respect
11	subsidiary of The New York Times Company and	11	to the Pension Fund, meaning the Newspaper
12	we handle their back-office work.	12	and Mail Deliverers'-Publishers' Pension
13	Q And what is your job title at	13	Fund, and the Welfare Fund which I mean
14	The Times?	14	Publishers'-Newspaper Mail Deliverers'
15	A I am currently the senior payroll	15	Welfare Fund, what are your duties with
16	in Accounts Payable and travel and	16	respect to those two funds?
17	entertainment expenses manager.	17	A I currently review the process on
18	Q How long have you held that	18	at least on annual basis, and in addition I
19	position at The Times?	19	review the remittance reports that go out
20	A I've been the senior payroll	20	and the payments to the Fund.
21	manager for ten to 15 years.	21	Q I'd like to start by asking you how
22	Q In that capacity are there other	22	The Times goes about calculating the pension
23	employees who report to you?	23	contributions to the Pension Fund.
24	A Yes. I have 15 employees who work	24	Can you tell us how that
25	for me.	25	calculation is performed?
			•
	Page 36		Page 37
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION A Yes, I can.	2	ARBITRATION the pension contribution.
2	ARBITRATION A Yes, I can. We currently aggregate a series of	2	ARBITRATION the pension contribution. A Can you repeat the question?
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	Page 38	Page 39
1	ARBITRATION	1 ARBITRATION
2	Q What is that code?	² contribution purposes, do they all
3	A We use earning code CRS currently.	necessarily arise from shifts that are
4	Q And how does the payroll system	actually worked by an employee?
5	know that an employee is working let's say a	5 A Not necessarily. We have vacation
6	sixth shift in a week as opposed to a third	pay, bereavement. Certain payments are not
7	or fourth shift that week?	actually worked but are included in their
8	A Well, we have a couple different	8 pay .
9	ways that determines that. But the first	9 Q And how does the system treat for
10	step is the time and attendance system,	pension purposes the pay that goes to
11	which is controlled at the plant by the	workers who are out on Workers'
12	foreman, which controls their work for the	12 Compensation?
13	week.	A We include that in the pension
14	And after the five shifts it	contribution, those wages are included.
15	converts the next shift to a sixth shift	Q And how does The Times determine
16	which has a separate earning code.	how much to pay the workers who are out on
17	Q And how does the what is the	Workers' Compensation if they are not
18	relationship between the payroll system and	actually working any shifts? What are they
19	that time and attendance system?	¹⁹ paid?
20	A The information from the time and	A We actually have a process. We go
21	attendance system is imported on the payroll	back and determine the last full eight weeks
22	system on a weekly basis, and we use that	and take the eight-week average for their
23	information to actually process the payroll.	occupational pay.
24	Q Now, with respect to the types of	Q Now, when an employee does work a
25	earnings that are added together for pension	shift, regular shift, how are the earnings
	Page 40	Page 41
1	ARBITRATION	1 ARBITRATION
2	ARBITRATION from that coded in the system? What is the	1 ARBITRATION 2 calculate the contributions.
2	ARBITRATION from that coded in the system? What is the earnings code for that?	ARBITRATION calculate the contributions. Q Now, are there any types of work
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	Page 42		Page 43
1	ARBITRATION	1	ARBITRATION
2	A Yes. Sure. We have some special	2	think he's leading again.
3	equipment at the plant that if an employee	3	ARBITRATOR IRVINGS: Sustained.
4	works on a special equipment, they would get	4	BY MR. ROTH:
5	additional pay for driving a tractor-	5	Q Can you tell us about the
6	trailer, for example, or working on a	6	practices, the historical anything about
7	forklift the back of the truck, that	7	the historical practices of The Times with
8	generates additional pay for whatever	8	respect to calculating pension
9	they're doing.	9	contributions?
10	Q And how is that type of pay treated	10	A Sure. We transitioned in mid-2008
11	for pension contribution purposes?	11	and at that point of transition we went back
12	A Those earnings are included in our	12	and reviewed how it was handled previously,
13	special accumulator and it is included in	13	and we made sure we mirrored what was done
14	the calculation for the pension	14	in the payroll systems system that goes back
15	contribution.	15	quite a few years.
16	Q Now, when calculating pension	16	Q Thank you.
17	contributions, do you or does the payroll	17	How often does The Times remit
18	system ever actually count up the number of	18	pension contributions to the Pension Fund?
19	shifts that an employee has worked?	19	A We remit the contributions on a
20	A No, we do not. Never. No.	20	monthly basis.
21	Q And, in general, has this approach	21	Q And what does The Times send to the
22	that you've been testifying about, has it	22	Pension Fund when it remits a contribution?
23	been consistent throughout your tenure at	23	A Well, we send them the money for
24	The Times?	24	the contributions and we send them a report
25	MR. GARFIELD: Objection. I	25	that actually gives them the details of the
	Page 44		Page 45
1	ARBITRATION	1	ARBITRATION
2	contributions, the amount of the payment,	2	out the Social Security number for obvious
3	the remittence.	3	reasons for confidentiality.
4	Q So I would like you to turn to	4	The employee ID number is a unique
5	Joint Exhibit 53 in the binders.	5	ID number applied to each employee at The
6	ARBITRATOR IRVINGS: Just	6	New York Times.
7	"exhibit." It's going to be hard	7	Q What does the fourth column mean?
8	habit to break, but it's my effort to	8	A The fourth column is what we call a
9	reform. It's Exhibit 53.	9	deduction code for the Deliverers' Pension.
10	MR. MILLER: Exhibit 53.	10	The fourth column is the
11	BY MR. ROTH:	11	Deliverers' Pension, DELPEN, represents the
12	Q Do you recognize this document?	12	Deliverers' Pension, our code for that
13	A Yes, sir. Sure do.	13	contribution in the payroll system.
14	Q What is it?	14	Q And then the next two columns are
15	A This is what we call a remittance	15	headed DEDMTD and DEDYTD.
16	report that is sent to the Fund office.	16	Can you tell us what those columns
17		17	represent?
	Q Can you tell us what the date of		
18	this report was?	18	A Absolutely.
19	this report was? A Sure. It was June 2010.	18 19	A Absolutely. The first one, the DEDMTD, stands
19 20	this report was? A Sure. It was June 2010. Q Can you just describe for us what	18 19 20	A Absolutely. The first one, the DEDMTD, stands for deduction month-to-date. And that's the
19 20 21	this report was? A Sure. It was June 2010. Q Can you just describe for us what the first three columns in this report	18 19 20 21	A Absolutely. The first one, the DEDMTD, stands for deduction month-to-date. And that's the actual calculation of the pension for that
19 20 21 22	this report was? A Sure. It was June 2010. Q Can you just describe for us what the first three columns in this report represent?	18 19 20 21 22	A Absolutely. The first one, the DEDMTD, stands for deduction month-to-date. And that's the actual calculation of the pension for that employee that we contributed to the Pension
19 20 21 22 23	this report was? A Sure. It was June 2010. Q Can you just describe for us what the first three columns in this report represent? A Absolutely. The first column is	18 19 20 21 22 23	A Absolutely. The first one, the DEDMTD, stands for deduction month-to-date. And that's the actual calculation of the pension for that employee that we contributed to the Pension Fund for that month.
19 20 21 22 23 24	this report was? A Sure. It was June 2010. Q Can you just describe for us what the first three columns in this report represent? A Absolutely. The first column is the individual's name we're contributing to.	18 19 20 21 22 23 24	A Absolutely. The first one, the DEDMTD, stands for deduction month-to-date. And that's the actual calculation of the pension for that employee that we contributed to the Pension Fund for that month. Q And the YTD column?
19 20 21 22 23	this report was? A Sure. It was June 2010. Q Can you just describe for us what the first three columns in this report represent? A Absolutely. The first column is	18 19 20 21 22 23	A Absolutely. The first one, the DEDMTD, stands for deduction month-to-date. And that's the actual calculation of the pension for that employee that we contributed to the Pension Fund for that month.

	Page 46		Page 47
1	ARBITRATION	1	ARBITRATION
2		2	dollars and cents.
3	the year-to-date amount at this point in time that we would have contributed to the	3	Q And then you have a bunch of
4		4	different rows in the column. What do the
5	Pension Fund for that employee.	5	
6	Q Those two columns, what units are	6	rows represent?
	those in?	7	A Each row is individual employee.
7	A These are both in dollars and		Q And if you can flip to the last
8	cents.	8	page of this exhibit, there is a line at the
9	Q Then the next two columns on the	9	end, a row at the end that says DELPEN
10	report are titled Base MTD and Base YTD.	10	Total.
11	Can you tell us what those columns	11	Can you tell us what that row is
12	represent?	12	indicating?
13	A Absolutely.	13	A The DELPEN Total row at the end is
14	The Base MTD is base month-to-date.	14	the sum of all the employee's contributions
15	That's an earning column. Those are special	15	for that month under the DEDMTD. That's the
16	accumulated earnings for the pension	16	total of all the employees.
17	contribution that we multiply by the	17	Q And what about under the base
18	percentage.	18	columns?
19	The Base YTD is the base	19	A It's similar. The total of all the
20	year-to-date column through June 2010 that	20	individual employee's amounts for the month.
21	would have been multiplied by 8 percent to	21	Or the year-to-date.
22	come up with the monthly contributions.	22	Q And what units are those totals in?
23	Q And then for those two columns,	23	A The totals are in dollars and
24	what units are those numbers in?	24	cents.
25	A These two columns are both in	25	Q Does anything on this remittance
	Page 48		Page 49
1	ARBITRATION	1	ARBITRATION
1 2	ARBITRATION report indicate the number of shifts any	2	
	ARBITRATION report indicate the number of shifts any employee worked?		ARBITRATION
2	ARBITRATION report indicate the number of shifts any	2	ARBITRATION Pension Fund?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION report indicate the number of shifts any employee worked? MR. GARFIELD: Objection. Leading. ARBITRATOR IRVINGS: Go ahead, you can have that question. You are right; however, the answer is no. Let's move on. BY MR. ROTH: Q And we can put aside the exhibit. Do you ever report to the Pension Fund how many shifts were worked by a particular employee? A Never, no. MR. GARFIELD: Objection. Leading. ARBITRATOR IRVINGS: Again, why don't you rephrase it so it's not leading. What's your practice regarding reporting shifts.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION Pension Fund? A We don't have a practice. We don't report shifts for the Pension Fund. Q Can you tell us historically anything about the format of these reports? Like going back, what do those reports look like ten years ago? Do you have any knowledge about that? A Yes, I do. At the time of transition from the old system to the new system, we actually mirrored the reports that were previously filed under the old system as far as we can go back. So this is the same format that's been used for years. Q And to whom did you send these remittance reports? A These remittance reports are e-mailed to the Fund office. Q And how did you generally communicate with the Fund office? A Via e-mail.

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1	ARBITRATION	1	ARBITRATION
2	reports?	2	The Times, would you have been aware of
3	A Never, no. Absolutely not.	3	those communications?
4	Q And if anyone from the Pension Fund	4	MR. GARFIELD: Same objection.
5	had asked anyone at The Times to include	5	MR. ROTH: Just move on.
6	shift numbers in the remittance reports,	6	ARBITRATOR IRVINGS: Move on.
7	would that request have come to you?	7	MR. ROTH: Thanks.
8	MR. GARFIELD: Objection. I'm	8	BY MR. ROTH:
9	not sure the witness has any	9	Q Now I'd like to ask you some
10	foundation to answer that.	10	questions about the Welfare Fund,
11	ARBITRATOR IRVINGS: Sustained.	11	Deliverers' Welfare Fund.
12	BY MR. ROTH:	12	Does The Times make contributions
13	Q Do you know whether if someone from	13	to the Welfare Fund?
14	the Pension Fund had asked someone from	14	A Yes, we do, yes.
15	The Times to report shift information, do	15	Q Can you tell us how those
16	you know whether you would have heard about	16	contributions are calculated?
17	that request?	17	A Well, there are more than one
18	MR. GARFIELD: Same objection.	18	Welfare Fund, so there's really not one way
19	ARBITRATOR IRVINGS: Do you	19	we do the calculations to the Welfare Fund.
20	want to talk about general	20	Q Can you explain what you mean by
21	communications between the Fund and	21	that?
22	The Times.	22	A Sure.
23	BY MR. ROTH:	23	We have one of the employer
24	Q To the extent there were general	24	Welfare Funds is a special accumulator
25	communications between the Pension Fund and	25	similar to DELPEN. It's a Deliverers'
	Page 52		Page 53
1	rage 32		rage 33
	A D D I TD A TION I	1	ADDITD ATION
	ARBITRATION	1 2	ARBITRATION
2	Welfare employer pay contribution.	2	Q How do the earnings that are
2	Welfare employer pay contribution. Then we have a shift-based	2 3	Q How do the earnings that are aggregated for this Welfare Fund
2 3 4	Welfare employer pay contribution. Then we have a shift-based contribution for DELCOL. Those are codes we	2 3 4	Q How do the earnings that are aggregated for this Welfare Fund contribution compare to the earnings that
2 3 4 5	Welfare employer pay contribution. Then we have a shift-based contribution for DELCOL. Those are codes we use in the payroll system. DELCOL, that's a	2 3 4 5	Q How do the earnings that are aggregated for this Welfare Fund contribution compare to the earnings that are aggregated for the Pension Fund
2 3 4	Welfare employer pay contribution. Then we have a shift-based contribution for DELCOL. Those are codes we use in the payroll system. DELCOL, that's a shift-base.	2 3 4 5 6	Q How do the earnings that are aggregated for this Welfare Fund contribution compare to the earnings that are aggregated for the Pension Fund contribution that we had talked about
2 3 4 5 6 7	Welfare employer pay contribution. Then we have a shift-based contribution for DELCOL. Those are codes we use in the payroll system. DELCOL, that's a shift-base. And we also have two employee	2 3 4 5 6 7	Q How do the earnings that are aggregated for this Welfare Fund contribution compare to the earnings that are aggregated for the Pension Fund contribution that we had talked about earlier?
2 3 4 5 6 7 8	Welfare employer pay contribution. Then we have a shift-based contribution for DELCOL. Those are codes we use in the payroll system. DELCOL, that's a shift-base. And we also have two employee contributions that are made that are	2 3 4 5 6 7 8	Q How do the earnings that are aggregated for this Welfare Fund contribution compare to the earnings that are aggregated for the Pension Fund contribution that we had talked about earlier? A The DELWEL and the DELPEN are the
2 3 4 5 6 7	Welfare employer pay contribution. Then we have a shift-based contribution for DELCOL. Those are codes we use in the payroll system. DELCOL, that's a shift-base. And we also have two employee contributions that are made that are deducted from an employee's pay and remitted	2 3 4 5 6 7	Q How do the earnings that are aggregated for this Welfare Fund contribution compare to the earnings that are aggregated for the Pension Fund contribution that we had talked about earlier? A The DELWEL and the DELPEN are the same earning codes they use for the
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	Page 54		Page 55
1			
1	ARBITRATION	1	ARBITRATION
2	number of shifts up to five for the week and	2	to the Welfare Fund compare to the
3	we multiply that by 47 cents per shift. And	3	remittance reports that The Times sends to
4	whatever that number comes up to, that's the	4	the Pension Fund?
5	amount that we remit to the Fund office.	5	A Could you repeat that question?
6	Q And how frequently does The Times	6	Q Sure.
7	remit those contributions to the Welfare	7	How do the remittance reports that
8	Fund?	8	you send to the Welfare Fund compare to the
9	A Those contributions are remitted	9	reports that you send to the Pension Fund?
10	weekly.	10	A Well, the DELWEL and the DELPEN
11	Q And when The Times remits those	11 12	remittance reports are very similar. But
12	ARBITRATOR IRVINGS: Just so		the other three are all shift-based, so, you
13	I'm clear, you are saying that the	13 14	know, three are shift-based and one is
14	DELCOL is remitted weekly or all	15	percentage-based.
15	Welfare Fund is remitted weekly?	16	Q I'll ask you to turn to Exhibit 32
16	THE WITNESS: All the Welfare		in the binder. I believe that should be in
17	Fund are remitted weekly. All.	17 18	the first binder.
18	BY MR. ROTH:	19	Mr. Claffee, do you recognize this
19	Q Okay. And when you make those	20	document?
20	weekly remittances, what does The Times send	21	A Yes, I do.
21	to the Welfare Fund?	22	Q What is it?
22	A Again, we send the money and we	23	A Give me one second to look through
23	also send what we call remittance reports to	24	it.
24	the Fund office.	25	This is the remittance report we
25	Q And how do those remittance reports	23	send to the Fund for the Welfare Fund
	Page 56		Page 57
1		1	Page 57
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION contributions.		ARBITRATION deduction current column which is actual
2	ARBITRATION contributions. Q Starting on the first page of the	2	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual
2	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover	2 3	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the
2 3 4	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being	2 3 4	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person.
2 3 4 5	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page?	2 3 4 5	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for
2 3 4 5 6	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page? A This is the DELCOL which is the	2 3 4 5 6	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for the year-to-date amount that we've
2 3 4 5 6 7	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page? A This is the DELCOL which is the Deliverers' COLA Welfare Fund.	2 3 4 5 6 7	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for the year-to-date amount that we've contributed based on the shifts for DELCOL.
2 3 4 5 6 7 8	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page? A This is the DELCOL which is the Deliverers' COLA Welfare Fund. Q Just remind us what type of	2 3 4 5 6 7 8	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for the year-to-date amount that we've contributed based on the shifts for DELCOL. The next column, which is the
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2 3 4 5 6 7 8 9 10	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page? A This is the DELCOL which is the Deliverers' COLA Welfare Fund. Q Just remind us what type of contribution that is. A This is shift-based contribution. Q Can you walk us through each of	2 3 4 5 6 7 8 9 10	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for the year-to-date amount that we've contributed based on the shifts for DELCOL. The next column, which is the Base CUR, is base current. That Number 5 is a shift count. So that's five shifts for the current period.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page? A This is the DELCOL which is the Deliverers' COLA Welfare Fund. Q Just remind us what type of contribution that is. A This is shift-based contribution. Q Can you walk us through each of these columns in this report, explain what they are? A Absolutely. Similar to the first report, you have the individual's names listed individually for their weekly contribution. You have their unique employee ID number in the second column. They're actually the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for the year-to-date amount that we've contributed based on the shifts for DELCOL. The next column, which is the Base CUR, is base current. That Number 5 is a shift count. So that's five shifts for the current period. The next column is Base YTD, is the base year-to-date. That would be this employee's total shifts at this point in time whenever this report was created. Q Just to clarify, what are the units of those last two columns, the base columns? A The last two columns are based on
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page? A This is the DELCOL which is the Deliverers' COLA Welfare Fund. Q Just remind us what type of contribution that is. A This is shift-based contribution. Q Can you walk us through each of these columns in this report, explain what they are? A Absolutely. Similar to the first report, you have the individual's names listed individually for their weekly contribution. You have their unique employee ID number in the second column. They're actually the last four digits of their Social Security	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for the year-to-date amount that we've contributed based on the shifts for DELCOL. The next column, which is the Base CUR, is base current. That Number 5 is a shift count. So that's five shifts for the current period. The next column is Base YTD, is the base year-to-date. That would be this employee's total shifts at this point in time whenever this report was created. Q Just to clarify, what are the units of those last two columns, the base columns? A The last two columns are based on shifts.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION contributions. Q Starting on the first page of the actual report as opposed to the cover e-mail, what type of contribution is being reported on this page? A This is the DELCOL which is the Deliverers' COLA Welfare Fund. Q Just remind us what type of contribution that is. A This is shift-based contribution. Q Can you walk us through each of these columns in this report, explain what they are? A Absolutely. Similar to the first report, you have the individual's names listed individually for their weekly contribution. You have their unique employee ID number in the second column. They're actually the last four digits of their Social Security number for confidentiality reasons. And the DEDCD column, that is what	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION deduction current column which is actual calculated amount of the shifts, actual amount of the contribution based on the shifts, \$2.35 for the first person. The next column, DEDYTD, stands for the year-to-date amount that we've contributed based on the shifts for DELCOL. The next column, which is the Base CUR, is base current. That Number 5 is a shift count. So that's five shifts for the current period. The next column is Base YTD, is the base year-to-date. That would be this employee's total shifts at this point in time whenever this report was created. Q Just to clarify, what are the units of those last two columns, the base columns? A The last two columns are based on shifts. Q And what happens, so if you were to take the base current for a particular employee, multiply that by 47 cents, what

Page 58	Page 59
1 ARBITRATION	1 ARBITRATION
² Q You are talking about the first?	2 Are there any other differences
A Yes. Five times 47 would be 2.35.	3 that you
4 Correct. Whatever the number of shifts are	4 A Yeah, I mean we have a few other
5 would be times 47 cents.	ones. We have if an employee goes on active
6 Q Let me ask you this.	duty, we have military pay to supplement
7 How do the categories of work and	7 their pay.
8 categories of absences that count for	8 Q How is that military pay treated
9 purposes of this DELCOL contribution to the	9 for pension contribution purposes?
Welfare Fund, how do they compare to the	10 A We would include that in the DELPEN
categories of work and categories of	aggregate and they would get a contribution.
absences that count for the DELPEN Pension	Q And how was that military pay
Fund contributions?	treated for DELCOL purposes?
A Just so I'm clear, comparing DELCOL	14 A It's not part of the DELCOL
to the DELPEN?	process. It's not included in that
16 Q Correct.	calculation at all.
A Well, the DELPEN is an aggregate of	Q And then if you just flip ahead in
quite a few earning codes including items	the same exhibit to I think it's the seventh
that are not shift-based like special	19 page.
equipment, like tractor-trailer	Can you tell us what this portion
differentials, forklift payments.	of the report relates to?
Those are not included in the shift	²² A Yes, sir.
calculation. I hope I'm answering your	Q This particular section is going to
question.	reflect the Deliverers' Welfare, the DELWEL
Q That's fine.	²⁵ contribution.
Page 60	Page 61
¹ ARBITRATION	¹ ARBITRATION
What's that contribution again?	2 A This is a sheet we update
What's that contribution again? A It's the Deliverers' Welfare	2 A This is a sheet we update 3 periodically and at least on an annual basis
What's that contribution again? A It's the Deliverers' Welfare contribution.	A This is a sheet we update periodically and at least on an annual basis with any contractual changes.
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Page 62	Page 63
¹ ARBITRATION	1 ARBITRATION
2 Q And then can you take us through	² called.
the next line on this sheet?	3 Q And then can you take us through
4 A Absolutely.	the next line below that, Delivery Welfare
5 The Welfare DED Code 614 was again	5 EE pretax?
6 the old legacy code which now translates to	6 A This was deduction Code 618 in our
the DELWPB, and it's an employee	old system which converted to DELWSP in the
8 contribution. The date there was 3-31-1987.	8 new one, which is a Welfare contribution and
9 And the per shift amount was \$3.67	9 at this time it was six dollars per shift
per shift with a five-shift cap.	with a five-shift max per week.
Q Okay. And then the next one down?	11 Q And then finally can you explain
A Sure.	the bottom section?
Again, this is a Welfare DED Code	13 A Absolutely. That's our Pension
615, the old legacy code converted to DELWEL	Code 620 which now converts to the DELPEN
in our new system.	code, and then we have the rates from 6-1-94
And then the years show the	through 3-31-09 as it changed on this sheet.
different rates as they changed during	Q And do you know why nothing in this
particular time periods, the percentages.	section, this Pension deduction of 620, why
Q And then the next line down?	nothing in this section talks about shifts?
A Is casual Welfare deduction	Do you know why that is?
Code 616 converted to DELWXT in our system,	A It has nothing to do with shifts.
and this one is per shift with the shift	22 It's strictly based on an aggregate of
amount changes per year. On that line.	23 earnings.
Q And what does it mean "casual"?	²⁴ Q Thank you.
A A nonregular employee who gets	So next I would like you to turn to
Dama CA	Daga 65
Page 64	Page 65
1 ARBITRATION	1 ARBITRATION
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ARBITRATION Exhibit 42. If you can look at not the cover	ARBITRATION how would you calculate the contribution for an employee who was, let's say, out on
1 ARBITRATION 2 Exhibit 42.	1 ARBITRATION 2 how would you calculate the contribution for
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	Page 67
¹ ARBITRATION	1 ARBITRATION
Q And what about for the foreman,	² per shift they worked.
salaried foreman? Any number on here for	Q Do you know who administered the
4 that?	4 401k for C & S?
5 A No, there's not.	5 A Yes.
6 Q Thanks.	6 Q Who was it?
7 Mr. Claffee, do you recall whether	7 A T. Rowe Price.
8 a New York Times subsidiary known as C & S	8 Q And when C & S made contributions
9 had a 401k plan for its employees?	o to that 401k, do you know if it reported
10 A Yes. I do recall them having a	anything to the plan administrator about how
401k plan, yes.	the Fund contributions were calculated?
Q Do you know on what basis	12 A Yes. We reported by individual the
contributions to that 401k plan were made?	shifts and the contribution.
A Yes. They were made they were	14 Q And how do you know that?
shift-based contributions.	15 A I was the one who was responsible
Q And can you turn to Exhibit 84.	16 for doing the remittance.
Can you turn to Page 3 of this	17 MR. ROTH: Thank you.
contract. Take a look at the chart that's	No more questions.
at the top of this page under the heading	MR. MILLER: Take a few
20 401k Plan Contribution.	20 minutes.
21 And what does this chart indicate	21 ARBITRATOR IRVINGS: Certainly.
to you about the basis on which C & S made	(A brief recess was
contributions to its 401k plan?	23 taken.)
A Looking at this, based on, for	24 CROSS EXAMINATION BY MR. GARFIELD:
example, on 3-31-06, they were getting \$7.27	25 Q Good morning, Mr. Claffee.
example, on 3 31 00, they were getting \$7.27	Q Good morning, wit. Clarice.
Page 68	Page 69
1 ARBITRATION	¹ ARBITRATION
² A Good morning.	2 I will tell you, my question about
³ Q So you are responsible for ensuring	this is going to be very general. But if
that The Times remits the amounts it owes to	4 you want to take a moment to familiarize
5 the Pension Fund, correct?	
the religion rulia, correct:	5 yourself with the document, please go ahead.
6 A That's correct.	 yourself with the document, please go ahead. A Yes, sir.
	yourself with the document, please go allead.
6 A That's correct.	6 A Yes, sir.
 A That's correct. Q So you need to know how The Times 	6 A Yes, sir. 7 Q Mr. Claffee, prior to your
A That's correct. Q So you need to know how The Times contributes to the Pension Fund?	6 A Yes, sir. 7 Q Mr. Claffee, prior to your 8 deposition in this matter, you had not
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1	ARBITRATION	1 ARBITRATION
2	Q Do you speak with Andrew Gutterman?	A No, I do not.
3	A Occasionally.	Q Never speak with you've never
4	Q And Chris Biegner?	spoken with Barbara Albergo about how
5	A Yes.	5 The Times should contribute to the Pension
6	Q And is there anyone else in	Fund?
7	The Times Labor Department who you review	A No, I have not.
8	the calculations with?	8 Q Do you ever speak with anyone at
9	A No one else.	the Newspaper and Mail Deliverers Union of
10	Q So you are told how The Times	New York and vicinity to understand how
11	should contribute to the Pension Fund?	The Times is required to contribute to the
12	A What I create is I update the rate	Pension Fund?
13	sheets on an automatic basis.	A No, I do not.
14	Before we implement any changes, we	Q Do you ever speak with other
15	review them with the Labor Department in New	contributing employers to the Pension Fund
16	York.	to understand how The Times was required to
17	Q Does the Labor Department have	contribute to the Pension Fund?
18	sign-off on the method through which you	A No. I'm not familiar with that at
19	contribute to the Pension Fund?	all, no.
20	A They approve the calculation	Q Other than Mr. Gutterman and
21	process.	21 Mr. Biegner, is there anyone else that you
22	Q Do you ever speak with people at	speak with about how The Times should
23	the Pension Fund office to understand how	contribute to the Pension Fund?
24	much The Times is required to contribute to	24 A That's it.
25	the Pension Fund?	Q And it's correct, Mr. Claffee, that
	the remover and	2 That it's correct, Mr. Charles, that
	Page 72	Page 73
1	Page 72 ARBITRATION	
1 2	ARBITRATION	
		¹ ARBITRATION
2	ARBITRATION you receive documents from the Pension Fund	 ARBITRATION necessarily I would get it directly. BY MR. GARFIELD:
2 3	ARBITRATION you receive documents from the Pension Fund about how The Times was obligated to	ARBITRATION necessarily I would get it directly. BY MR. GARFIELD:
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION you receive documents from the Pension Fund about how The Times was obligated to contribute to the Pension Fund? A Not from what what document are you referring to? Q Take a look at Exhibit 42. I believe that Mr. Roth asked you about the second page when you were testifying earlier. If you could take a look at that, please. A Okay. Q Do you receive a document that looks like this approximately once a year from the Pension Fund? A Yes, we do. ARBITRATOR IRVINGS: Just so I'm clear, you answered "we." And I'm not sure you are using the royal "we" or it's just you who gets it. THE WITNESS: It could come via e-mail to my staff, so not	ARBITRATION necessarily I would get it directly. BY MR. GARFIELD: Q You would personally see it each year; is that correct? A I would see it each year, yes. Q Mr. Claffee, please take a look at the left-hand side of the top chart under the words "effective 3-31-2013." Do you see there are four terms written there: Day rate, short night, long night and SAT, period, night. Those are different types of shifts, correct? A Correct. Q And then look at the numbers immediately to the right of those four terms. You agree those are the different rates that employees earn for working their respective shifts; is that correct? A Yes. Q Now, when you received this

	Page 74		Page 75
1	_	1	_
1	ARBITRATION	1	ARBITRATION
2	of the column under Pension Fund High Rate	2	Q So the answer to my question is no?
3	that calculates the wages that an employee	3	A No. Yes, sir.
4	earns per shift times 8 percent?	4	Q The Times does not actually
5	A You asked do I see it?	5	contribute to the Pension Fund 8 percent of
6	Q Did you see it when you received	6	all wages that an employee earns in a month;
7	it?	7	is that correct? For shifts worked?
8	A Yes, yes.	8	A That's correct.
9	Q Mr. Claffee, what's your	9	Q If an employee works six shifts in
10	understanding of the term "shift" as we're	10	a week, The Times does not contribute
11	using it here today?	11	8 percent of the money the employee earned
12	A The term "shift," my understanding	12	in respect of all six shifts; is that
13	is when someone works a shift.	13	correct?
14	Q Does it refer to a number of hours?	14	A That's correct, yes, sir.
15	A It could, I guess. I'm not too	15	Q And why is that?
16	familiar with that. I'm not sure what you	16	A I couldn't tell you that. I could
17	are asking there.	17	tell you the mechanism. I don't understand
18	Q When you received this form	18	why we don't contribute on the sixth shift.
19	approximately once a year, did you ever	19	Q Mr. Claffee, during your deposition
20	communicate with anyone in the Pension Fund	20	in December, if you recall, you initially
21	office that you thought the form was	21	testified that The Times' percentage-based
22	incorrect?	22	contributions to the Pension Fund and the
23	A I don't use that column for	23	Welfare Fund were based strictly on a
24	anything so I never communicated anything	24	percentage of total wages without any
25	out.	25	limitation due to shifts, correct?
	Page 76		Page 77
1	Page 76	1	Page 77
1 2	ARBITRATION	1 2	ARBITRATION
2	ARBITRATION A Correct.	2	ARBITRATION Q If an employee works five shifts in
2	ARBITRATION A Correct. Q And later during the same	2	ARBITRATION Q If an employee works five shifts in a week I want to give you an example to
2 3 4	ARBITRATION A Correct. Q And later during the same deposition following a break and discussion	2 3 4	ARBITRATION Q If an employee works five shifts in a week I want to give you an example to run through the calculation.
2 3 4 5	ARBITRATION A Correct. Q And later during the same deposition following a break and discussion with counsel, you changed your testimony,	2	ARBITRATION Q If an employee works five shifts in a week I want to give you an example to run through the calculation. A Okay.
2 3 4 5 6	ARBITRATION A Correct. Q And later during the same deposition following a break and discussion with counsel, you changed your testimony, correct?	2 3 4 5	ARBITRATION Q If an employee works five shifts in a week I want to give you an example to run through the calculation. A Okay. Q To keep the numbers simple, let's
2 3 4 5	ARBITRATION A Correct. Q And later during the same deposition following a break and discussion with counsel, you changed your testimony, correct? A Correct.	2 3 4 5 6	ARBITRATION Q If an employee works five shifts in a week I want to give you an example to run through the calculation. A Okay. Q To keep the numbers simple, let's say the wage rate is \$200 per shift.
2 3 4 5 6 7	ARBITRATION A Correct. Q And later during the same deposition following a break and discussion with counsel, you changed your testimony, correct? A Correct. Q You recently signed an affidavit	2 3 4 5 6 7	ARBITRATION Q If an employee works five shifts in a week I want to give you an example to run through the calculation. A Okay. Q To keep the numbers simple, let's say the wage rate is \$200 per shift. So is it your testimony that to
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	Page 78		Page 79
1	ARBITRATION	1	ARBITRATION
2	Q Correct.	2	You know, the items that are not
3	A Yeah, I guess you could do that.	3	shift-based they wouldn't get the Pension
4	Q And 8 percent of \$200, would you	4	benefit on.
5	agree that that's \$16?	5	Q Are you talking about the
6	A Eight percent of \$200 is \$16, yes.	6	differential for, for example, a forklift?
7	Q And if the same employee works five	7	A Yes, sir.
8	shifts in a week, to determine the	8	Q So that amount wouldn't be included
9	contribution The Times would make for that	9	in the calculation of what would be
10	week, you would take five times \$16; is that	10	contributed to the Pension Fund; is that
11	correct?	11	correct?
12	A Correct. Five Times 16 would be	12	A That would be correct, yes, sir.
13	80, yes, sir.	13	Q Let's do one more example. Keep
14	Q And that's the same amount	14	the earnings per shift at \$200.
15	depending on if the calculation is 8 percent	15	Say the employee works six shifts
16	1 0 1	16	in a week.
17	of the total wages for an employee who works five shifts in a week or if The Times	17	
18		18	So given what your testimony, am
19	contributes 8 percent of the wages an	19	I correct that it's your view that The Times
20	employee earns for each shift for the five	20	would still make the contribution to the
21	shifts worked, correct?	21	Pension Fund as if the employee had worked
	A Correct. The only thing that would	22	five shifts in a week, correct?
22	be missing would be the special equipment		A That's correct. Yes, sir.
23	work and things like that, though.	23	Q So the calculation would still
24	We wouldn't have that in that	24	yield an \$80 contribution in respect of a
25	number.	25	week in which an employee actually worked
	Page 80		Page 81
1	Page 80 ARBITRATION	1	Page 81 ARBITRATION
1 2		1 2	
	ARBITRATION		ARBITRATION
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2 3 4 5 6 7	ARBITRATION six shifts, correct? A Correct. Q Again, if the Times contributed by shift instead for up to five shifts, do you agree that you would obtain the same calculation of \$80 that The Times would ultimately contribute to the Pension Fund?	2 3 4 5 6 7	ARBITRATION first five shifts, that would yield the same contribution as if The Times was contributing 8 percent of the wages that an employee earns per shift but only for the first five shifts, correct? A Correct. With the exception it's not including some of the other items. I do
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	Page 82		Page 83
1	ARBITRATION	1	ARBITRATION
2	Q Now, you testified that The Times	2	
3	each month actually contributes money to the	3	And I would like you to flip to the
4	Pension Fund; is that correct?	4	last page of the exhibit, please.
5		5	A Yes, sir.
6	A That is correct. Yes, sir.	6	Q Bates stamped NYT-49.
7	Q Do you agree that 8 percent,	7	A Okay.
8	standing on its own and not multiplied	8	Q Now I'm asking about payment of
9	against any other figure or data point, does	9	wages now, not contributions to the Pension
10	not yield a dollar amount that The Times can	10	Fund.
11	use to determine how much to contribute to	11	Understood?
12	the Pension Fund?	12	A Yes, understood.
13	A I'm a little confused by that	13	Q Employees who participate in the
14	question. If you would repeat it for me.		Pension Fund get paid a specified rate per
	ARBITRATOR IRVINGS: You can	14 15	shift in wages; is that correct?
15	argue that point.		A That is correct.
16	MR. RICHMAN: Yeah.	16	Q So for working a day, employees
17	ARBITRATOR IRVINGS: It's not a	17	earn a specified daily wage?
18	factual point. It's an argument.	18	A Yes, sir.
19 20	Go ahead.	19 20	Q And that wage varies based on the
21	BY MR. GARFIELD:	21	particular shift; is that correct?
22	Q Mr. Claffee, you testified you also	22	A On the day side?
23	are generally responsible for payroll for	23	Q Well, the type of the
24	The Times; is that correct?	24	description of the shift for working a day
25	A That is correct, yes, sir. Q Can you look at Exhibit 30, please.	25	varies based on the category of shift; is that correct?
20	Q Can you look at Exhibit 30, please.	20	that correct?
	Page 84		Dama OF
	1490 01		Page 85
1		1	
1 2	ARBITRATION	1 2	ARBITRATION BY MR. GARFIELD:
	ARBITRATION A Oh, you are looking at this sheet		ARBITRATION BY MR. GARFIELD:
2	ARBITRATION A Oh, you are looking at this sheet here?	2	ARBITRATION BY MR. GARFIELD: Q Going down the list, those are
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2 3 4	ARBITRATION A Oh, you are looking at this sheet here? Q Right. I'm looking at specifically the left-hand column where it lists shifts	2 3 4	ARBITRATION BY MR. GARFIELD: Q Going down the list, those are different types of shifts, different; is that correct?
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2 3 4 5 6	ARBITRATION A Oh, you are looking at this sheet here? Q Right. I'm looking at specifically the left-hand column where it lists shifts and there's day, night, Sunday through Thursday, Friday and Saturday.	2 3 4 5	ARBITRATION BY MR. GARFIELD: Q Going down the list, those are different types of shifts, different; is that correct?
2 3 4 5 6 7	ARBITRATION A Oh, you are looking at this sheet here? Q Right. I'm looking at specifically the left-hand column where it lists shifts and there's day, night, Sunday through Thursday, Friday and Saturday.	2 3 4 5 6 7	ARBITRATION BY MR. GARFIELD: Q Going down the list, those are different types of shifts, different; is that correct? A Well, you have day and then you have night.
2 3 4 5 6 7 8	ARBITRATION A Oh, you are looking at this sheet here? Q Right. I'm looking at specifically the left-hand column where it lists shifts and there's day, night, Sunday through Thursday, Friday and Saturday. A Right. I'm with you there.	2 3 4 5 6 7 8	ARBITRATION BY MR. GARFIELD: Q Going down the list, those are different types of shifts, different; is that correct? A Well, you have day and then you have night. Q Correct.
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2 3 4 5 6 7 8 9	ARBITRATION A Oh, you are looking at this sheet here? Q Right. I'm looking at specifically the left-hand column where it lists shifts and there's day, night, Sunday through Thursday, Friday and Saturday. A Right. I'm with you there. Q And there are different daily rates that apply to the different types of shifts; isn't that right? A I thought when you were saying	2 3 4 5 6 7 8 9	ARBITRATION BY MR. GARFIELD: Q Going down the list, those are different types of shifts, different; is that correct? A Well, you have day and then you have night. Q Correct. A So you said the day, though. There's only one "day" going across the line. I want to be clear what I'm talking about here.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION A Oh, you are looking at this sheet here? Q Right. I'm looking at specifically the left-hand column where it lists shifts and there's day, night, Sunday through Thursday, Friday and Saturday. A Right. I'm with you there. Q And there are different daily rates that apply to the different types of shifts; isn't that right? A I thought when you were saying "day," I thought you were talking about the Day column. Q I'm talking about the vertical Day column, yes. And my question for you ARBITRATOR IRVINGS: The vertical Day column? You threw me off on that. Which one is the vertical Day column? MR. GARFIELD: I'm looking at the Shift column.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION BY MR. GARFIELD: Q Going down the list, those are different types of shifts, different; is that correct? A Well, you have day and then you have night. Q Correct. A So you said the day, though. There's only one "day" going across the line. I want to be clear what I'm talking about here. Q For example, Saturday, compare day and Saturday. There's a different daily rate that an employee is paid in wages if they work a day shift versus a Saturday shift according to this; is that correct? A Yes, that's correct. Q Okay. So for The Times to pay an employee's wages, The Times would need to know how many shifts an employee worked and what type of shift they worked; is that correct?

	Page 86		Page 87
1	ARBITRATION	1	ARBITRATION
2	Q And the work that was performed,	2	A Yes, sir. Yes, they are.
3	correct?	3	Q So it's correct then that The Times
4	A Correct.	4	has shift information for employees who
5	Q And The Times would have to know	5	participate in the Welfare Fund, right?
6	the rate that the employee earned in respect	6	A Correct. Yes, sir.
7	of each of the shifts that they had worked	7	Q The Times contributes for the same
8	during the pay period; is that correct?	8	employees in both the Pension Fund and the
9	A That is correct, yes.	9	Welfare Fund?
10	Q Mr. Claffee, you testified that	10	A Yes, we make contributions to the
11	The Times does not report shifts on the	11	Pension Fund and the Welfare Fund.
12	remittance reports that it submits to the	12	Q So, Mr. Claffee, if you have the
13	Pension Fund; is that correct?	13	weekly Welfare Fund remittance reports that
14	A That is correct, yes, sir.	14	cover a particular month, if someone wanted
15	Q As you also testified, The Times	15	to obtain information about how many shifts
16	does report shifts in the remittance reports	16	an employee had worked to use for some
17	to the Welfare Fund; is that correct?	17	purpose related to the Pension Fund, they
18	A For certain Welfare Funds, yes.	18	could use the Welfare Fund remittance
19	Q So for those certain Welfare Funds,	19	reports to derive that information, right?
20	shifts are relevant; is that correct?	20	A I don't think so. I mean, we would
21	A That is correct, yes, sir.	21	be missing some earnings. There's some
22	Q And that shift information is	22	earnings that are not included. That
23	included on the weekly remittance reports	23	wouldn't be right. Not the way we do it
24	that are sent by The Times to the Welfare	24	today.
25	Fund; is that correct?	25	Q My question is not about earnings.
	Page 88		Page 89
1	Page 88	1	Page 89
1 2	ARBITRATION	1 2	ARBITRATION
2	ARBITRATION My question is only about shift information.	1 2 3	ARBITRATION codes under the DELPEN.
	ARBITRATION My question is only about shift information. A But I thought you were saying	2	ARBITRATION codes under the DELPEN. So I don't think you would have the
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2 3 4 5 6	ARBITRATION My question is only about shift information. A But I thought you were saying would the report still be correct just based on shifts, correct? Wasn't that the question? Q Let me rephrase it.	2 3 4 5 6	ARBITRATION codes under the DELPEN. So I don't think you would have the same number is what I'm saying. It's a different calculation. Q How far off do you think it would be?
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Page 90 Page 91 1 1 **ARBITRATION ARBITRATION** 2 2 not aware of anyone from the Pension Fund asked me that, no. 3 3 reaching out to anyone at The Times to raise O And that includes Barbara Albergo? 4 Α 4 any concerns about the fact that The Times 5 5 was not including shift information on 0 Do you have any understanding if 6 anyone from the Pension Fund office has remittance forms to the Pension Fund; is 7 7 asked any of your colleagues to include that correct? 8 8 shift information? A I can't say that. I don't know 9 9 Are you talking about the what goes on in New York. I mean, in the 10 10 colleagues, folks I work with in my office? shop that I work at in Norfolk, Virginia, 11 11 I am, yes. no one's ever reached out to the team that I 12 12 Well, I'm the direct contact to the work with at the SSC for any pension 13 New York Labor Department. Any changes that 13 information. When you say The Times, I 14 14 go through, go through me. can't speak for The Times Company. 15 15 Any requests that come to my team All I'm asking is for your 16 that want to modify a change, it would be 16 knowledge, if you have any knowledge that 17 escalated to me, which we escalate it to the 17 anyone from the Pension Fund has reached out 18 18 New York Labor folks before we make any to anyone at The Times, being at the Shared 19 19 Service Center, being at the Labor changes. 20 20 We're very concerned about making Department in New York? 21 sure we do everything right with the SSC, so 21 That question, I have no idea. 22 22 we are very, very careful with that kind of Do you have any understanding of 23 stuff, and it definitely would have made it 23 the term "pensionable wages"? 24 to my desk. 24 Α Yes. 25 Q So it's your testimony that you're 25 And what is a pensionable wage? O Page 92 Page 93 1 **ARBITRATION** 1 **ARBITRATION** 2 2 Using my context, the pensionable So take somebody on jury duty, how 3 3 wages would be the aggregate we use to does The Times know how much to contribute 4 4 calculate the DELPEN contribution. to the Pension Fund for an employee who is 5 5 So that would refer to, for on jury duty? 6 example, the earning code REG or RGM as a 6 My understanding -- I don't work at 7 7 couple of examples; is that correct? the College Point plant, but at the plant 8 8 Yes, that would be some of them. they have a time/attendance system that they A 9 9 And it would not include the shifts would enter that day as a jury duty day, at 10 that The Times does not contribute for, such 10 that employee's rate, and we would receive 11 as the CRS code which refers to overtime; is 11 the rate for that day. 12 12 So is it your testimony The Times that correct? 13 13 That is correct, yes. would contribute 8 percent of what that Α 14 0 So for internal purposes, isn't 14 employee's typical day rate is? 15 that correct that The Times tracks shifts 15 A Correct. 16 worked with respect to the various pension 16 And how about for Workers' 17 codes that you're referring to? 17 Compensation, how exactly is the calculation 18 A We do not track the shifts at all. 18 made about how much The Times should 19 We aggregate the earnings and multiply that 19 contribute? 20 by 8 percent on a monthly basis. 20 Α Well, we go back to the last full 21 Q The Times contributes to the 21 8 weeks that they worked and we get the what 22 Pension Fund for employees who haven't 22 we call the 8-week average, and we use that 23 actually worked certain shifts; isn't that 23 to process the Workers' Comp. benefit. 24 correct? 24 Eight-week average of what? 0 25 25 That's correct, yes, sir. Α Α Of their earnings.

	Page 94		Page 95
1		1	
2	ARBITRATION	1 2	ARBITRATION
3	Q Of their earnings per day?	3	MR. GARFIELD: Mr. Arbitrator,
4	A Of their weekly earnings.	4	I would like to show the witness one
5	Q Is that obtained by taking their	5	of the exhibits it's 18, but it's
6	average earnings per day and multiplying it	6	in the objected.
7	times five?	7	MR. MILLER: Objected
8	A No. It's taking the total for each	8	Exhibit 18?
9	of the weeks and dividing that by 8.	9	MR. GARFIELD: Correct.
10	Q We spoke about the differential	10	ARBITRATOR IRVINGS: I don't
11	payments for the tractor-trailer employees.	11	know where my Objected folder went.
12	A Uh-huh.	12	Thanks.
13	Q How is that differential payment	13	MR. MILLER: Mr. Arbitrator, we
14	made to employees?	14	object to the use of this document
15	A It has its own earning code.	15	and its introduction into the record. ARBITRATOR IRVINGS: And the
16	Q Is it made on a per-shift basis? A It's made on the work that they do.	16	
17	A It's made on the work that they do. Whatever type of work that they do, if	17	basis is that you don't have either
18		18	of the people. MR. MILLER: The basis is that,
19	they're using the tractor-trailer for that	19	
20	work, they would get the differential. Q If they work on the tractor-trailer	20	indeed, we do not have either of the
21	Q If they work on the tractor-trailer for a day, then they would get the	21	people to testify as to the context for this document.
22	differential?	22	The document makes reference to, I
23	A I'm not really that clear on	23	believe, accrued benefits. The second
24	exactly whether it's	24	full sentence refers to checks
25	Q Okay.	25	representing accrued benefits. That's a
	Q Okty.		representing accrack benefits. That's a
	Page 96		Page 97
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION phrase that is not reasonably understood	2	ARBITRATION the document on the first page that is
2	ARBITRATION phrase that is not reasonably understood in the context of pension contribution,	2	ARBITRATION the document on the first page that is the critical issue. It's
2 3 4	ARBITRATION phrase that is not reasonably understood in the context of pension contribution, so we really have no context here for the	2 3 4	ARBITRATION the document on the first page that is the critical issue. It's self-explanatory.
2 3 4 5	ARBITRATION phrase that is not reasonably understood in the context of pension contribution, so we really have no context here for the reason for this letter and the language	2 3 4 5	ARBITRATION the document on the first page that is the critical issue. It's self-explanatory. I understand why
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2 3 4 5 6 7	ARBITRATION phrase that is not reasonably understood in the context of pension contribution, so we really have no context here for the reason for this letter and the language used in this letter. And we will not have the ability to	2 3 4 5 6 7	ARBITRATION the document on the first page that is the critical issue. It's self-explanatory. I understand why ARBITRATOR IRVINGS: He can argue whether that point is
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Page 98	Page 99
1 ARBITRATION	¹ ARBITRATION
brought to bear, to demonstrate the	² Mr. Claffee if he has any
relationship between accrued benefits	3 understanding why The New York Times
and pension contributions.	4 would have sent this letter to the
5 This may be a one-off arrangement.	5 Pension Fund office.
We simply have no idea, and we do not	6 ARBITRATOR IRVINGS: As I said,
have the ability to test those who may	you can start with your questions.
8 those who authored this letter and those	8 Go ahead.
⁹ who helped them.	9 BY MR. GARFIELD:
There's mention of ccs. We don't	Q Mr. Claffee, would you take a look
know who these individuals are.	at the first page of Exhibit 18 in the
Mr. Schwartz is not available.	"objected to" binder.
Mr. Garfield, I guess, could attempt to	A Just the first page?
lay a foundation, but I think at the end	Q That's all I'm going to ask you
the day, the foundation is going to go	¹⁵ about.
nowhere because none of the individuals	16 A Okay.
who really understand the context for	Q Do you have any understanding as to
this letter will be able to provide that	why Mr. Baker would have referred to shifts
context to you.	in respect of contributions for somebody who
MR. GARFIELD: Mr. Claffee's	was out on Workers' Compensation in a letter
testified that the process for these	to the Pension Fund office?
contributions has remained the same	A I have no idea at all.
during an extended period of time	Q Does this contradict your
that encompasses the date that this	understanding of how The Times contributes
letter was sent. And I'd like to ask	for employees who are out on Workers' Comp.?
Page 100	Page 101
_	Tage 101
¹ ARBITRATION	¹ ARBITRATION
A It does. We base it on wages, the	1 ARBITRATION 2 received in Evidence.)
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	Page 102		Page 103
1	ARBITRATION	1	ARBITRATION
2	based on wages, as you are testifying is	2	BY MR. GARFIELD:
3	the case, would it yield a different	3	Q Are you aware of a situation in
4		4	which The Times has ever made contributions
5	dollar amount than if the contribution	5	
6	was based on shifts?")	6	to the Pension Fund for an employee who was
7	(End of read-back.)	7	on Workers' Comp., using shifts as the basis
	MR. MILLER: Mr. Arbitrator,		to calculate the amount that should be
8	can I lodge an objection here?	8	contributed?
9	I must say that I did not think the	9	A Not as long as I've been doing it,
10	question related to this document	10	no. We've used wages consistently
11	precisely because there's been simply no	11	throughout.
12	foundation laid that this witness knows	12	Q Last question about this exhibit.
13	anything about this document and the	13	Who is James S. Baker?
14	context behind this document.	14	A James worked in the Labor
15	So I'm not sure I don't	15	Department up until a couple years back and
16	understand the question as it may or may	16	retired.
17	not pertain to this document, and, to the	17	Q Did he hold the position that Terry
18	extent that it does, there's certainly no	18	Hayes now holds?
19	foundation that's been set forth to	19	A No.
20	justify this question with this witness	20	Q Did he report to Terry Hayes?
21	who knows nothing about it.	21	A I would guess he does. I don't
22	ARBITRATOR IRVINGS: Go ahead.	22	know off the top. Terry, as far as I know,
23	You can ask foundation questions to	23	is the head of the department.
24	see whether he has any of the requisite	24	Q Okay.
25	knowledge to answer that question.	25	MR. GARFIELD: I have another
	Page 104		Page 105
1	Page 104 ARBITRATION	1	Page 105 ARBITRATION
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	_		ARBITRATION
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	Page 106		Page 107
1 ARRITRAT	-	1	ARBITRATION
AMDITMI			BY MR. MILLER:
to impeden, we na	ve an exhibit list and bits in this case. And	3	
those are the exime		4	Q Mr. Claffee, you have before you what's you now been marked as Exhibit 117.
the parties are not	allowed, unless an	5	Do you see that?
CAMILOTE IS OTHER WIS	se admitted, to freely	6	A Yes, sir.
use exilioits that w	ve were not aware of	7	Q And can you tell me what this
Tot impeaciment p	R IRVINGS: Well, my	8	document is?
		9	A This is an internal document the
understanding of p		10	SSC prepares for the New York Labor
113t3 13 that you are		11	Department.
willen you are gon		12	•
your case in ciner		13	Q The first page is an e-mail that
C1055-CAMIIIIMMIOII		14	you were copied on; is that correct? A Yes.
	pear to be a document	15	
	d during his deposition.	16	Q And the second two pages attach a spreadsheet; is that correct?
WIIX, WIILLEN		17	•
	R IRVINGS: Okay. So	18	A Correct, yes.Q Can you look at the bottom of
I ili allowing it.		19	the I know it's difficult to read each
Go ancau.	I.D. Thoule year	20	of the three charts that appear on the
MIN. OAKI ILI	LD: Thank you. R IRVINGS: This will	21	second and third pages.
22 be 117.	R IRVINGS. This will	22	And you see there is a reference to
UC 117.	t 117 year	23	pensionable and nonpensionable?
(Exhibit Exhibit 24 marked in Evidence		24	A Yes, sir.
marked in Evidence	R IRVINGS: Go ahead.	25	Q Earlier I asked you whether
ARDITRATO	K IKVINGS. Go alicau.		C Earner Lasked you whether
	Page 108		Page 109
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	e number of shifts that		ARBITRATION Labor Department.
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1 ARBITRATION	1	ARBITRATION
2 MR. GARFIELD: Can I see the	2	MR. GARFIELD: I have no
question before that, please.	3	
Q I think you testified earlier,	4	further questions for Mr. Claffee. Thank you.
5 Mr. Claffee, that it's your understanding	5	THE WITNESS: You're welcome.
6 that the "pensionable" refers to earnings or	I	
7 earning codes on which contributions are	7	MR. MILLER: Let us just talk
8 made to the Pension Fund; is that correct?	8	for two minutes. There may be a very, very brief redirect.
	9	ARBITRATOR IRVINGS: Let me
A That is correct, yes, sir. Q What's your understanding of what	10	make sure I understand.
"nonpensionable" refers to?	11	
12 A The sixth shift would be	12	For the eight-week average earnings
13 nonpensionable.	13	figures, would a sixth shift earnings
	14	during a sixth shift at any point in that
Q 50 The Times, according to this	15	eight weeks be included or not included?
document, knows now many sinits are	16	THE WITNESS: Not.
pensionable and now many sinits are	17	ARBITRATOR IRVINGS: And might
nonpensionable, is that correct:	18	as well for the DELCON, for the
		Welfare contributions that are
Q Wir. Clarice, if all employee works a	20	MR. MILLER: DELCOL.
Sixth Shift during the eight-week lookodek	21	ARBITRATOR IRVINGS: DELCOL,
period for purposes of workers		I'm sorry.
Compensation, would the contribution that		What happens for shifts where
The Times makes to the Tension Tune mer	ude 23	there's bereavement leave, jury duty,
the sixth shift at a higher rate:	25	vacation, sick pay?
²⁵ A No, it would not.	23	THE WITNESS: They count.
Page 1	.12	Page 113
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¹ ARBITRATION		ARBITRATION
 ARBITRATION ARBITRATOR IRVINGS: Okay. 	1	ARBITRATION REDIRECT EXAMINATION BY MR. ROTH:
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Page 114 Page 115 1 1 **ARBITRATION ARBITRATION** 2 2 discussed earlier for the four shifts that the foreman. We just pay the foreman a 3 3 salary, so he gets that contribution were worked, what would the result of that 4 calculation have been had you done it that 4 regardless. 5 5 O Does the contribution for the way? 6 6 Á Just done the four shifts they foreman change from week to week? 7 7 worked, it would be four times \$200 which No. They're salaried. 8 8 would total to \$800. Then I would take the And then you had discussed earnings 9 9 codes and some shift codes, so let me ask \$800 times 8 percent and that would be a 10 10 64-dollar contribution for that week. you: Which, if any, earnings codes that 11 11 count for pension purposes do not have a Thank you. 12 12 And then one other hypothetical. shift number attached to them? 13 13 A I mean, off the top of my head, I Assume you have a salaried foreman. You 14 14 testified earlier general foreman are paid would say military pay, the special 15 15 equipment pay don't have any shifts on a salary basis. 16 16 associated with it. Assuming you have a foreman who was 17 paid a thousand dollars a week, what would 17 And do The Times make Pension 18 18 the Pension contribution be for that foreman contributions based on those earnings codes? 19 19 A Yes, we do. for that week? 20 A It would be \$1,000 times 8 percent, 20 If an employee is out on military 21 21 and earns military pay, does The Times make so it would be \$80. 22 22 any DELCOL contributions to the Welfare Fund Q How, if at all, would that 23 23 calculation change if the foreman had worked for that employee? 24 24 let's say only three shifts that week? No. There's no shifts involved 25 We don't calculate the shifts for 25 with the military pay. It's just earnings. Page 116 Page 117 1 1 **ARBITRATION ARBITRATION** 2 Then there were a couple questions 2 MR. ROTH: Yes. 3 about whether the Pension Fund office had THE WITNESS: I can answer 4 4 ever asked The Times to report shifts in its that. 5 5 remittance reports. MR. ROTH: Yes. 6 6 A I do. I mean, I would have to do If someone from the Fund office had 7 7 called not you but let's say someone in The 8 8 New York Times Labor Department and they Q Okay. And then the last question. 9 9 wanted to make that change, let's say, who If you can turn back to 10 would ask to implement that change? 10 Exhibit 117 -- or I believe it was 116, the 11 MR. GARFIELD: Objection. I 11 letter that we had discussed. 12 don't know that he has any foundation 12 A I didn't put it in the binder yet. 13 to answer that question. 13 Q Oh. It's this one here. 14 BY MR. ROTH: 14 Prior to this case, this 1.5 15 O Would someone in the Labor arbitration, have you ever seen this letter 16 16 Department have independently been able to before? 17 change the reporting system for the 17 A No, I've never seen this letter 18 remittance reports to the Pension Fund? 18 before. 19 MR. GARFIELD: Same objection. 19 MR. ROTH: Thank you. 2.0 I think it's linked to the prior 20 That's it. No further questions. 21 question which I objected to. 21 MR. GARFIELD: I have just one 22 ARBITRATOR IRVINGS: Are you 22 question. 23 asking sort of who does the 23 RECROSS EXAMINATION BY MR. GARFIELD: 24 administerial functions of changing 24 Mr. Claffee, does The Times make 25 things? 25 contributions to the Pension Fund in respect

	Page 118		Page 119
1	ARBITRATION	1	ARBITRATION
2	of personal days taken by employees?	2	ARBITRATOR IRVINGS: Thank you
3	A Yes, we do. It's included in the	3	very much.
4	aggregate number.	4	(A luncheon recess was taken at
5	Q And on what basis or how does	5	12:51 p.m. through 2:02 p.m.)
6	withdraw.	6	TERRY L. HAYES,
7	How does The Times know how much to	7	having been first duly sworn
8	contribute in respect of a personal day	8	by Arbitrator Irvings, was examined
9	taken by the employee to the Pension Fund?	9	and testified as follows:
10	A We contribute 8 percent of whatever	10	DIRECT EXAMINATION BY MR. MILLER:
11	those day's earnings were.	11	Q Good afternoon, Mr. Hayes.
12	Q If it's a personal day, what do you	12	Can you state your full name and
13	mean by the "day's earnings"?	13	place of residence for the record.
14	A They have a schedule at the plant	14	A Yes. My name is Terry, middle
15	that's in the time and attendance system.	15	name, Lee, last name Hayes. I reside in New
16	Whatever their normal shift is, if they're	16	York City.
17	taking a personal day, their work day is	17	Q And where are you employed?
18	where they would get that personal day.	18	A New York Times Company.
19	Q What they normally get paid for	19	Q And what is your current position
20	working a day; is that correct?	20	at The Times?
21	A Correct.	21	A I'm senior vice president of
22	MR. GARFIELD: Okay. No	22	Operations and Labor.
23	further questions for us.	23	Q How long have you held that
24	MR. MILLER: No further	24	position?
25	questions.	25	A I've held that position since July
	4		11 1 vo nota mac position since vary
	Page 120		Page 121
1	Page 120 ARBITRATION	1	Page 121 ARBITRATION
1 2		1 2	
	ARBITRATION of 2009. Q And what did you do before becoming		ARBITRATION
2	ARBITRATION of 2009.	2	ARBITRATION Q And in connection with your airline
2	ARBITRATION of 2009. Q And what did you do before becoming	2 3	ARBITRATION Q And in connection with your airline work, in what area of airline operations were you employed? A In the airlines, I was in charge of
2 3 4	ARBITRATION of 2009. Q And what did you do before becoming senior VP for Operations and Labor at The Times? A I originally came to The Times in	2 3 4 5 6	ARBITRATION Q And in connection with your airline work, in what area of airline operations were you employed?
2 3 4 5 6 7	ARBITRATION of 2009. Q And what did you do before becoming senior VP for Operations and Labor at The Times? A I originally came to The Times in 2006, July of 2006, and I came in as vice	2 3 4 5	ARBITRATION Q And in connection with your airline work, in what area of airline operations were you employed? A In the airlines, I was in charge of operations, labor relations and human resources.
2 3 4 5 6 7 8	ARBITRATION of 2009. Q And what did you do before becoming senior VP for Operations and Labor at The Times? A I originally came to The Times in 2006, July of 2006, and I came in as vice president of Labor Relations.	2 3 4 5 6 7 8	ARBITRATION Q And in connection with your airline work, in what area of airline operations were you employed? A In the airlines, I was in charge of operations, labor relations and human resources. Q So for roughly how many years have
2 3 4 5 6 7 8	ARBITRATION of 2009. Q And what did you do before becoming senior VP for Operations and Labor at The Times? A I originally came to The Times in 2006, July of 2006, and I came in as vice president of Labor Relations. Q Can you provide the arbitrator a	2 3 4 5 6 7 8	ARBITRATION Q And in connection with your airline work, in what area of airline operations were you employed? A In the airlines, I was in charge of operations, labor relations and human resources. Q So for roughly how many years have you been involved with labor relations?
2 3 4 5 6 7 8 9	ARBITRATION of 2009. Q And what did you do before becoming senior VP for Operations and Labor at The Times? A I originally came to The Times in 2006, July of 2006, and I came in as vice president of Labor Relations. Q Can you provide the arbitrator a short summary of your work history prior to	2 3 4 5 6 7 8 9	ARBITRATION Q And in connection with your airline work, in what area of airline operations were you employed? A In the airlines, I was in charge of operations, labor relations and human resources. Q So for roughly how many years have you been involved with labor relations? A Oh, over 30.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION of 2009. Q And what did you do before becoming senior VP for Operations and Labor at The Times? A I originally came to The Times in 2006, July of 2006, and I came in as vice president of Labor Relations. Q Can you provide the arbitrator a short summary of your work history prior to being employed at The New York Times. A Out of college I went to work for the airlines. Started with Ozark Airlines in 1974. Ozark was merged into TWA, later TWA was merged into American, so I kind of followed that track. Then shortly after 9-11 in 2001, I left the airlines for a period and went to work for the Transportation Security Administration, TSA. I stayed there for a couple years. Then in 2003, I went back to the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION Q And in connection with your airline work, in what area of airline operations were you employed? A In the airlines, I was in charge of operations, labor relations and human resources. Q So for roughly how many years have you been involved with labor relations? A Oh, over 30. Q Can you briefly describe to us what the responsibilities are of the senior vice president for Operations and Labor at The New York Times? A At The Times my responsibilities include newspaper production, magazine production, both T Magazine, the weekly magazine that appears in the Sunday paper; Safety, security, building operations, all the real estate that The Times has around the world; and labor relations. Q I'm now going to ask you a series

	Page 122		Page 123
1	ARBITRATION	1	ARBITRATION
2	trustees for multiemployer pension or	2	Q And who are currently the other
3	welfare plans?	3	trustees on that Fund?
4	A Yes, I do.	4	A There is a another management
5	Q And which ones?	5	trustee on the Fund from one of the other
6	A I sit on the Fund for the New York	6	
7		7	publishers as well as two trustees from the
8	Guild, Newspaper Guild, both Pension and	8	Union.
	Welfare.	9	Q Who is the other management
9	And I also sit on the MDU, both		trustee?
10	Pension and Welfare.	10	A Just slipped my mind. Sorry. I
11	Q And NMDU would be the Newspaper and	11	went blank.
12	Mail Deliverers-Publishers Union?	12	Q That's all right.
13	A The Newspaper Mail and Deliverers	13	Is he a recent appointee?
14	Union, yes.	14	A Yes.
15	Q Thank you.	15	Q Very recent appointee?
16	And the Pension Fund is called the	16	A Very recent.
17	Newspaper and Mail Deliverers'-Publishers'	17	Q And who are the Union trustees of
18	Pension Fund?	18	the Fund?
19	A Yes.	19	A Mr. Setteducato and Mr. Tommy
20	Q And that's the Pension Fund in	20	Bentvena.
21	connection with this arbitration, correct?	21	Q In your role as trustee of the
22	A That is correct.	22	Pension Fund, have you had any involvement
23	Q And when did you join the board of	23	in the trustees' decisions in connection
24	trustees for the NMDU Pension Fund?	24	with the assessment of partial withdrawal
25	A I joined in 2007.	25	liability against The Times?
	11 I Joined in 2007.		naomty against the times:
	Page 124		Page 125
1	Page 124 ARBITRATION	1	
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION A No, I have not.		ARBITRATION Q Roughly, how many meetings have you
2	ARBITRATION A No, I have not. Q So you have not attended any	2	ARBITRATION Q Roughly, how many meetings have you attended of the trustees in which during the
2	ARBITRATION A No, I have not. Q So you have not attended any trustee board meetings where that issue was	2	ARBITRATION Q Roughly, how many meetings have you attended of the trustees in which during the course of the meeting you've been asked to
2 3 4	ARBITRATION A No, I have not. Q So you have not attended any trustee board meetings where that issue was discussed?	2 3 4	ARBITRATION Q Roughly, how many meetings have you attended of the trustees in which during the course of the meeting you've been asked to step out and recuse yourself?
2 3 4 5	ARBITRATION A No, I have not. Q So you have not attended any trustee board meetings where that issue was discussed? MR. RICHMAN: Objection.	2 3 4 5	ARBITRATION Q Roughly, how many meetings have you attended of the trustees in which during the course of the meeting you've been asked to step out and recuse yourself? A Most all the meetings leading up to
2 3 4 5	ARBITRATION A No, I have not. Q So you have not attended any trustee board meetings where that issue was discussed? MR. RICHMAN: Objection. ARBITRATOR IRVINGS: What's the	2 3 4 5 6	ARBITRATION Q Roughly, how many meetings have you attended of the trustees in which during the course of the meeting you've been asked to step out and recuse yourself? A Most all the meetings leading up to the assessment letter.
2 3 4 5 6 7	ARBITRATION A No, I have not. Q So you have not attended any trustee board meetings where that issue was discussed? MR. RICHMAN: Objection. ARBITRATOR IRVINGS: What's the objection?	2 3 4 5 6 7	ARBITRATION Q Roughly, how many meetings have you attended of the trustees in which during the course of the meeting you've been asked to step out and recuse yourself? A Most all the meetings leading up to the assessment letter. Q Since approximately what year?
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Page 126 Page 127 1 **ARBITRATION ARBITRATION** 2 2 subsidiary of The New York Times. Q What did that team conclude about C & S's viability? 3 Its business was distributing 3 4 mostly retail location papers for not only 4 A That team concluded that C & S was 5 The Times but for some of the other 5 not a viable company during our assessment. 6 publishers in the City. We shared that information with our 7 7 Q When you started at The Times in senior management and also with the 8 8 July 2006, how was C & S doing financially? leadership of the Union. 9 A When I joined The Times in 2006, 9 We talked to the Union and advised 10 10 there was already a senior team that was them that they might want to hire an analyst discussing C & S. They had been discussing to come in. And under an NDA we shared 11 11 12 12 C & S for several months before I arrived. sensitive information about the company, 13 13 The assessment was clear that C & S financial as well as operational. 14 14 And he came back to the team, both was not doing well, and so we were trying to 15 15 come up with a solution for the C & S the management team and the Union team that 16 16 problem. were in the room together, and his 17 17 assessment was, basically, he looked at the And you mentioned the assessment. O 18 18 Would that be the -- that was the assessment Union and told them even if they drove for 19 19 free, it was not a viable company. of whom? 20 20 A It was the assessment of the And this was the assessment of the 21 21 Union's financial consultant? management team that was working through the 22 22 Yes, it was. process. Α 23 What did The Times decide to do 23 We looked at every option we could 24 think of in dealing with the C & S financial 24 about C & S following the team's assessment? 25 25 A Following those meetings, we met issue. Page 129 Page 128 1 1 ARBITRATION **ARBITRATION** 2 2 with, again, our senior management to brief that period of time. So getting your hands 3 3 them on what those discussions had brought. on operating capital was pretty tough. And this was about the beginning of June of 4 4 Q What steps did The New York Times 5 5 2008 we had those discussions. Discussions have to take to implement its decision to 6 6 with the Union took place during the summer. close C & S? 7 7 So it was determined that C & S A Once we decided to close C & S and 8 8 should be closed, and we made a decision made that public, we knew that we would have 9 9 that we would publicly announce that in to sit down with the NMDU and discuss a 10 10 September of 2008. wind-down proposal and plan that would do 11 Q How was The New York Times doing 11 several things. 12 12 financially during this time period? Number one, we wanted to maintain 13 The New York Times, like most 13 the business we already had. It was already 14 14 publications, most newspapers, we were in terrible shape but we wanted to protect 15 really going through a really tough time 15 what we did have left. And we also wanted 16 with the advent of the e-readers and the 16 to come up with a plan that would treat the 17 17 Internet and that entire thing that employees fairly during the wind down. 18 18 continues today to give us problems. O What was your understanding, if 19 So we were having a really tough 19 any, about The Times' contractual 20 time. We were losing subscribers. They 20 obligations to C & S employees in the event

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A Under the C & S contract, we had an

employees who had been employed by C & S for

obligation to the C & S regular situation

holders, which were the regular C & S

were losing advertisers, so it was pretty

Then you throw on top of that the

economic situation in general because we

were in the midst of the meltdown during

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tough.

of the C & S closing?

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more than one year, to give them eight weeks of pay as their severance.

- Q And notwithstanding the contractual obligations, was The Times prepared to negotiate a package beyond those contractual obligations?
- A As I said, we wanted to maintain the business, we wanted to protect the business that we had, and we were prepared to give the employees a greater severance package covering more employees than we were contractually obligated to do.
- Q And let's discuss and why don't you summarize in general terms what issues were discussed with NMDU as part of these negotiations.
- A We discussed various issues. As I said, it was important to us to maintain the business. It was important to the Union that we treated the employees fairly, giving them something that would help them get a softer landing than what's called for the contract.

And also they were most interested

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in our trying to hire in to The Times operations as many employees as they could get us to take.

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It was our original thought that we really didn't want to take hardly any employees. We were kind of exiting that business. So as part of the cost savings that we were going through at the time, it was our impression not to take any of those employees.

However, during the negotiations, it became very clear to us that this was a cornerstone issue for the Union that we hire some of these employees.

- Q And so as a consequence of this being a cornerstone issue for the Union, what was eventually agreed to?
- A After several months of discussion, we had identified a business plan that made sense for us to hold on to that we could justify where we would keep certain Manhattan retail distribution outlets under our control

So what we ended up coming up with

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ARBITRATION

was a plan that gave the company the option to, if there were less than eight copies of papers sold during a week as an average, we could give that work to anybody else. If it was less than eight copies during the week, we could give that work away.

So based on the construct such as that, we identified locations that had eight or more, and those we kept inside The Times. And we hired employees from C & S to do that work.

- Q And were pension costs a consideration that The Times were mindful of in these negotiations?
- A When we initially put together our plan, it was our plan not to hire any employees.

So part of our cost structure when we were figuring out what the cost of winding down C & S was, we had built in a withdrawal possibility, a partial withdrawal possibility.

That number was totaled about 15 million which was 12 million for the NMDU

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plan -- and C & S was part of a wholesaler plan, so we had identified \$3 million that would be associated with that.

Now, when we were going through the process of determining if we were going to hire employees or not, we realized that their desire for us to hire employees would address the issue of withdrawal liability.

So that was when we decided we'd go forward with that, then that affected what those withdrawal liability numbers were.

O Okav.

And how would the hiring of C & S employees at The Times, how would that address the issue of withdrawal liability?

- A Hiring enough employees from C & S at the rate that was The New York Times rate, because the C & S rate was less than The Times wage rate. So hiring them at The Times in the right numbers with the correct Times pay rate and wage rate would keep us above that level where we would pick a partial withdrawal.
 - Q And did The Times model how many

Page 134 Page 135 1 ARBITRATION 1 ARBITRATION 2 2 When we began the negotiations and C & S employees would be needed to 3 3 potentially avoid or, rather, prevent -once we started really talking about taking 4 4 strike that. on employees, our proposals initially were 5 5 to pay them at C & S rates. And the Union, Did The Times model how many C & S 6 6 employees The Times would need to prevent a of course, wanted a higher number. I think 7 7 partial withdrawal? they were near 80 people at one point that 8 8 The driver was how many employees they wanted us to take. 9 9 did it take to get the job done. And so we Eighty, of course, didn't fit into 10 10 figured that it would be somewhere between the business plan of the modeling of work 11 58 and 60 employees that would kind of get 11 that we needed to have done, so we ended up us to that level. 12 12 agreeing to 65 folks at The New York Times 13 13 So, yes, we did model that. And rates 14 14 those numbers coincidentally worked out. O I'd now like to turn your attention 15 15 And what was your understanding at to Exhibit Number 55, which I think is in 16 that point in time of the relevant unit for 16 the second binder. 17 measuring whether a 70 percent decline might 17 Α Yes. 18 18 occur? Do you recognize this document? 19 19 Do you recognize this document, Α It was the percentage of wage. 20 Q It was wages? 20 sir? 21 21 Wages. A Α Yes. This is the C & S closing 22 22 And what did your estimates or O agreement. projections show in that regard respecting 23 23 0 And can you read into the record 24 hiring needs to keep wages above the 24 the first sentence of Paragraph 2A of this 25 30 percent mark? 25 document. Page 137 Page 136 1 1 ARBITRATION ARBITRATION 2 2 ARBITRATOR IRVINGS: It is in Leading. 3 MR. MILLER: I can rephrase. the record. 4 4 MR. MILLER: Yes. All right. ARBITRATOR IRVINGS: Please. 5 5 BY MR. MILLER: BY MR. MILLER: 6 6 Q Can you focus on the first sentence Q Based on these hires, did The New 7 7 of Paragraph 2A of this document? York Times have any expectations about the 8 8 impact of these hires on the prospect of a Α Yes. 9 9 0 Did The Times ultimately hire 65 partial withdrawal? 10 C & S employees pursuant to this agreement? 10 Yes. We felt with these hires at 11 A Ultimately, we hired a total of 68. 11 The New York Times rates of pay, that we So what we hired was the 65 in accordance 12 would not have a partial withdrawal. 12 13 13 with the agreement, and the hiring was done O Do Times drivers get paid the same 14 in seniority order. So we needed some 14 wage as C & S drivers, or did they at the supervision also for this group, so we ended 15 1.5 time? 16 16 up hiring an additional three people from Α No, they did not. 17 17 What was the significance of the C & S. 18 So the total number was 68, at the 18 wage differential between The Times and 19 19 C & S in connection with expectations about end of the day. Q And what was your expectation based 2.0 20 these hires? on these hirings as to whether The Times' 21 21 ARBITRATOR IRVINGS: I'm not 22 22 contribution base units with respect to the sure I understand the question. 23 23 Pension Fund would not decrease by MR. RICHMAN: It's leading, 24 24 70 percent? anyway. 25 25 MR. RICHMAN: Objection. MR. MILLER: I'll rephrase.

	Page 138		Page 139
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION ARBITRATOR IRVINGS: Go ahead.	2	Q And was there a prior filed 8-K in
3	BY MR. MILLER:	3	connection strike that.
4	Q Was there a significance about the	4	Let me lay a better foundation.
5	wage differential between The Times and	5	This 8-K/A filing was in connection
6	C & S in connection with The Times'	6	with what event, sir?
7	consideration about hiring and the	7	A Yeah. Several lines down this
8	possibility of partial withdrawal?	8	is there is a date here of
9	A Yes. As I stated before, the wage	9	September 8th. That's a rounded date that
10	rates were higher at The Times. And when we	10	we announced the closing of C & S.
11	brought these employees over, we raised	11	So this 8-K/A represents an update
12	their rates from the C & S rates to	12	at some point of the original filing of the
13	The Times rates, so the overall average	13	8-K that was tied to the closing of C & S or
14	rate, wage rate was higher for The Times'	14	the announcement of the close.
15	contributions.	15	Q And did The Times file an 8-K
16	Q And now I would like you to turn	16	regarding the closure of C & S?
17	your attention to Exhibit 38.	17	A Yes, they did.
18	A Okay. I have it.	18	Q What was purpose of the 8-K/A, the
19	Q Do you recognize this document,	19	amendment to the original 8-K filing, in
20	sir?	20	connection with the closing of C & S?
21	A Yes. This is a Form 8-K/A filing	21	A It was to update any information
22	for The New York Times Company.	22	that may have changed from the original
23	Q What is an 8-K/A?	23	filing, because we have to give the most
24	A An 8-K/A is, if you will, an	24	up-to-date and most correct information that
25	amendment to a prior filed 8-K.	25	we can in our filings.
			Ü
	Page 140		Page 141
1	ARBITRATION	1	ARBITRATION
2	Q And when was this amendment, this	2	page entitled at the bottom NYT-000486.
3	8-K/A filed?	3	A Yes.
4	A This 8-K/A was filed on December 2,	4	Q Do you see Section 2.05?
5	2008.	5	A Yes, I do.
6	Q And what was the relationship	6	Q And what is the purpose of that
7	between the filing of this 8-K/A and any	7	paragraph?
8	closing agreement that you had reached with	8	A That paragraph, as stated in its
9	the Union in connection with the C & S	9	heading, "Costs associated with the exit or
10	MR. RICHMAN: Objection.	10	disposal activities."
11	Leading. Was there a relationship	11	This is totally regarding the C & S
12	MR. MILLER: I'm asking for	12	closure, and this is going through the
13	I can easily lay the foundation.	13	numbers of what those estimates and costs
14	BY MR. MILLER:	14	may be.
15	Q Was there a relationship between	15	Q And what did Section 2.05 indicate
	•	1.0	`
16	the filing of this amended 8-K and the	16	the costs would be to The Times of closing
16 17	the filing of this amended 8-K and the closing agreement that had been reached	17	the costs would be to The Times of closing C & S?
16 17 18	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S?	17 18	the costs would be to The Times of closing C & S? A The cost to closing C & S was
16 17 18 19	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S? A Yes. By December 2, 2008, we had	17 18 19	the costs would be to The Times of closing C & S? A The cost to closing C & S was between 48 and 53 million of which
16 17 18 19 20	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S? A Yes. By December 2, 2008, we had negotiated the closing agreement. The	17 18 19 20	the costs would be to The Times of closing C & S? A The cost to closing C & S was between 48 and 53 million of which 30 million was associated with the staff
16 17 18 19 20 21	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S? A Yes. By December 2, 2008, we had negotiated the closing agreement. The document had been signed, the document had	17 18 19 20 21	the costs would be to The Times of closing C & S? A The cost to closing C & S was between 48 and 53 million of which 30 million was associated with the staff reduction which included any type of
16 17 18 19 20 21 22	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S? A Yes. By December 2, 2008, we had negotiated the closing agreement. The document had been signed, the document had been ratified by the Union.	17 18 19 20 21 22	the costs would be to The Times of closing C & S? A The cost to closing C & S was between 48 and 53 million of which 30 million was associated with the staff reduction which included any type of withdrawal liability that there may be.
16 17 18 19 20 21 22	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S? A Yes. By December 2, 2008, we had negotiated the closing agreement. The document had been signed, the document had been ratified by the Union. Q Mr. Hayes, can you turn your	17 18 19 20 21 22 23	the costs would be to The Times of closing C & S? A The cost to closing C & S was between 48 and 53 million of which 30 million was associated with the staff reduction which included any type of withdrawal liability that there may be. Q And do you have an understanding as
16 17 18 19 20 21 22 23 24	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S? A Yes. By December 2, 2008, we had negotiated the closing agreement. The document had been signed, the document had been ratified by the Union. Q Mr. Hayes, can you turn your attention to Section 2.05 of this document.	17 18 19 20 21 22	the costs would be to The Times of closing C & S? A The cost to closing C & S was between 48 and 53 million of which 30 million was associated with the staff reduction which included any type of withdrawal liability that there may be. Q And do you have an understanding as to whether the estimated cost in this 8-K/A
16 17 18 19 20 21 22	the filing of this amended 8-K and the closing agreement that had been reached respecting the closing of C & S? A Yes. By December 2, 2008, we had negotiated the closing agreement. The document had been signed, the document had been ratified by the Union. Q Mr. Hayes, can you turn your	17 18 19 20 21 22 23 24	the costs would be to The Times of closing C & S? A The cost to closing C & S was between 48 and 53 million of which 30 million was associated with the staff reduction which included any type of withdrawal liability that there may be. Q And do you have an understanding as

Page 142	Page 143
1 ARBITRATION	1 ARBITRATION
of any withdrawal liability to the NMDU	that were made in the 8-K and 8-K/A, if any?
Fund?	3 A This was the backup document that
4 A Yes.	4 we utilized to feed what was ultimately
Q And what is that understanding?	5 placed into the 8-K.
· ·	placed into the 6-K.
A That understanding was that there	This is our infancial backup.
would be no withdrawar hability from the	Q I'd like you to turn your attention
TVIDO I dild.	to the last page of this document, the page
However, there was a small	that's chilled at the bottom right
withdrawal for the Wholesaler Fund of about	10 NYT-000717.
11 3 million. 12 O And is the Wholesaler Fund related	The you at that page, sir:
And is the wholesaler I that related	71 105, 1 am.
to the NMDU Fund?	Q Looking to the last page of the
A No, it's not. Totally separate.	document, what does this say across the line
Q I'd now like to draw your attention	that's entitled Potential Withdrawal
to Exhibit 54.	16 Liability?
A Okay. I have it.	17 A Yes. This document states that at
Q Do you recognize this document?	this point in our preparation that there was
A Yes. This is an internal document	a 15 and the 15 is in millions there
that we used when we were forecasting the	was a 15-million-dollar partial withdrawal
cost of the C & S closure.	liability that we booked at this point.
Q And does this internal document	Q And what do the next columns say
strike that.	under the heading 8-K Filing Low, 8-K Filing
What is the relationship between	²⁴ High?
this internal document and the disclosures	A Those both say at this point TBD,
Page 144	Page 145
¹ ARBITRATION	1 ARBITRATION
1 ARBITRATION 2 to be determined.	1 ARBITRATION 2 range is 3 million.
ARBITRATION to be determined. Q And which, if any, of the 8-K or	1 ARBITRATION 2 range is 3 million. 3 What that represents is we now know
ARBITRATION to be determined. Q And which, if any, of the 8-K or 8-K/A filings would the Number 15 million on	1 ARBITRATION 2 range is 3 million. 3 What that represents is we now know that we have a signed agreement with the
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ARBITRATION to be determined. Q And which, if any, of the 8-K or 8-K/A filings would the Number 15 million on the last page have been reflected in? A The change to this would have been reflected in the final backup to the final	1 ARBITRATION 2 range is 3 million. 3 What that represents is we now know 4 that we have a signed agreement with the 5 Union and it's been ratified, so the numbers 6 that we can place in here now are our best 7 estimate of what our withdrawal liability
ARBITRATION to be determined. Q And which, if any, of the 8-K or 8-K/A filings would the Number 15 million on the last page have been reflected in? A The change to this would have been reflected in the final backup to the final document because then we would be able to	ARBITRATION range is 3 million. What that represents is we now know that we have a signed agreement with the Union and it's been ratified, so the numbers that we can place in here now are our best estimate of what our withdrawal liability would be.
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1 ARBITRATION 2 to be determined. 3 Q And which, if any, of the 8-K or 4 8-K/A filings would the Number 15 million on 5 the last page have been reflected in? 6 A The change to this would have been 7 reflected in the final backup to the final 8 document because then we would be able to 9 fill in the TBDs. 10 Q And thus now I'd like you to turn 11 your attention to the first page of this 12 document, the one that is entitled on the 13 right NYT-000713. 14 And how was this first page 15 different from the last page of the 16 document? 17 A This page has now removed the TBDs, 18 and they've replaced them with numbers, if 19 you will. 20 So what this says now under the 21 Potential Withdrawal Liability is the 22 original number was 15 million. Now there's 23 a range that we've added, a low range and a	1 ARBITRATION 2 range is 3 million. 3 What that represents is we now know 4 that we have a signed agreement with the 5 Union and it's been ratified, so the numbers 6 that we can place in here now are our best 7 estimate of what our withdrawal liability 8 would be. 9 Q And does this document contain a 10 description relating to The New York Times' 11 assumption about withdrawal liability for 12 the NMDU plan? 13 A Yes, it does. 14 It states that it assumes no 15 withdrawal liability for the NMDU plan and a 16 minimum withdrawal for the C & S plan. 17 The C & S plan was a wholesaler 18 plan. 19 Q That you referred to earlier? 20 A That's what I referred to earlier. 21 Q And what is the date on this 22 document, "this document" being the Page 1 23 of this exhibit?
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	Page 146		Page 147
1	ARBITRATION	1	ARBITRATION
	oral relationship between 12-1-2008 and	2	MR. MILLER: Okay.
	that the closing agreement		BY MR. MILLER:
	ling C & S had been signed and	4	Q Would the judgment of The Times
5 ratifie		5	about the potential for withdrawal liability
6 A	Again, this is post ratification,	6	to the Pension Fund have been different had
	know what the numbers are. And this	7	you believed that a different relevant unit
	nent indicates that.	8	applied to determine CBUs and the potential
9 Q	And why, if any, reason were you	9	of a 70 percent decline?
	o make the determination that you	10	A Yes. We would have made other
	orialized on the front page of this first	11	choices other than the ones we did.
	of the document in connection with	12	Q And if you had believed that the
	rawal liability expectations for the	13	relevant unit for measuring the 70 percent
	U plan?	14	decline was shifts, what would you
15 A	-	15	potentially have done?
16 the wa	ages that we were paying the employees	16	A I could have gone with the higher
	ame over from C & S, we were sure that	17	number that the Union wanted me to hire,
18 we we	ould not take a partial withdrawal.	18	just accept their number. That would have
19 Q	And, indeed, what does it say, if	19	gone a long way to solve that problem, or,
²⁰ anyth	ing, about The Times' belief in the	20	conversely, since we knew since we had
21 accura	acy of the dollar figures for the cost	21	figured out what our withdrawal would be, we
	C & S closing that it put those	22	may have decided not to hire any.
	figures in its 8-K/A filing?	23	Q And why would you have potentially
	ARBITRATOR IRVINGS: You can	24	done something different if you had
²⁵ argı	ue that.	25	understood that CBUs was shifts rather than
	Page 148		Page 149
1		1	-
	ARBITRATION	1 2	ARBITRATION
	ARBITRATION	2	ARBITRATION
wageA	ARBITRATION s?	2	ARBITRATION Q And can you describe those
 wage A betwee numb 	ARBITRATION s? Because of the wage differential een The Times and C & S, I mean, the eers were just different.	2 3 4 5	ARBITRATION Q And can you describe those communications?
 wage A betwee numb 	ARBITRATION s? Because of the wage differential een The Times and C & S, I mean, the eers were just different. As far as shifts were concerned,	2 3 4 5 6	ARBITRATION Q And can you describe those communications? A Yes. Inside of one of the
 wage A betwee numb there 	ARBITRATION s? Because of the wage differential een The Times and C & S, I mean, the eers were just different. As far as shifts were concerned, was no way that there could be that	2 3 4 5 6 7	ARBITRATION Q And can you describe those communications? A Yes. Inside of one of the agreements, the Union had negotiated the ability to move up to 2 percent of the wages from Pension to Welfare. And that was
 wage A betwee numb there balan 	ARBITRATION s? Because of the wage differential een The Times and C & S, I mean, the eers were just different. As far as shifts were concerned, was no way that there could be that ce because there are just a lot of	2 3 4 5 6 7 8	ARBITRATION Q And can you describe those communications? A Yes. Inside of one of the agreements, the Union had negotiated the ability to move up to 2 percent of the wages from Pension to Welfare. And that was negotiated back in the late '90s, I believe.
 wage A betwee numb there balan peopl 	ARBITRATION s? Because of the wage differential een The Times and C & S, I mean, the eers were just different. As far as shifts were concerned, was no way that there could be that ce because there are just a lot of e at C & S, so you didn't have that	2 3 4 5 6 7 8	ARBITRATION Q And can you describe those communications? A Yes. Inside of one of the agreements, the Union had negotiated the ability to move up to 2 percent of the wages from Pension to Welfare. And that was negotiated back in the late '90s, I believe. Q Can I draw your attention so we can
 wage A betwee numb there balan peopl wage 	ARBITRATION s? Because of the wage differential een The Times and C & S, I mean, the eers were just different. As far as shifts were concerned, was no way that there could be that ce because there are just a lot of e at C & S, so you didn't have that arbitrage that you could deal with.	2 3 4 5 6 7 8 9	ARBITRATION Q And can you describe those communications? A Yes. Inside of one of the agreements, the Union had negotiated the ability to move up to 2 percent of the wages from Pension to Welfare. And that was negotiated back in the late '90s, I believe. Q Can I draw your attention so we can elaborate on this a little bit, so Exhibit
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	Page 150		Page 151
1	_	1	
2	ARBITRATION	2	ARBITRATION
	summarize your understanding of the		MR. MILLER: We will attempt to
3	paragraph marked D.	3	do so at the appropriate time,
4	ARBITRATOR IRVINGS: One	4	Mr. Arbitrator.
5	moment. Let me read it, please.	5	BY MR. MILLER:
6	BY MR. MILLER:	6	Q Do you have an understanding of
7	Q Mr. Hayes, go ahead and summarize.	7	whether the Union ever exercised this right
8	A Paragraph D sets up, if you will,	8	to move contributions?
9	an agreement that allows the Union to	9	A They absolutely did.
10	reapportion those percentages of wages	10	Q Now let me direct your attention to
11	between the two funds as long as the total	11	Exhibit 6.
12	contribution between the two funds was not	12	And, Mr. Hayes, what is this
13	greater than 15.68 percent.	13	document?
14	Q And what did this language imply to	14	A This document is a letter from
15	you about the basis for The Times'	15	Stephen Goldstein, who at the time of this
16	contributions to the Pension Fund?	16	writing was the secretary/chair of the NMDU
17	MR. RICHMAN: Objection.	17	as well as a trustee.
18	ARBITRATOR IRVINGS: You are	18	And it's a letter to Thomasina
19	asking him for opinion, an argument.	19	McMillan who was our manager of payroll.
20	He could testify as to if he knows	20	Q What is the date of this letter?
21	how it's implemented, but to the extent	21	A January 22, 2008.
22	this all happened before he was there,	22	Q And you were indeed employed at
23	you are simply asking for him to	23	The New York Times at this time?
24	interpret a document which you can do	24	A Yes, I was.
25	just as well, I'm sure.	25	Q And did you see this document on or
	,		
	Page 152		Daga 152
1			Page 153
1	ARBITRATION	1	ARBITRATION
1 2	_	1 2	-
	ARBITRATION around the time it was sent?		ARBITRATION
2	ARBITRATION around the time it was sent? A Yes, I did.	2	ARBITRATION Thanks. BY MR. MILLER:
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION around the time it was sent? A Yes, I did. Q And given that you saw this document or recall seeing this document at or around the time it was distributed, what did this document imply to you about the basis on which The Times is obligated to contribute to the Pension Fund? A This document, the specifics of it moved a half percent from the Welfare Fund back to the Pension Fund, so our pension contributions would now be changed, effective February 1st, to 6 and a half percent of wage effective that date. Q And what did this document imply to you about the Union's understanding of the basis on which The Times is obligated to contribute to the Pension Fund? MR. RICHMAN: Objection. ARBITRATOR IRVINGS: You are asking him to speculate on their state of mind? MR. MILLER: Withdrawn.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION Thanks. BY MR. MILLER: Q I'd like to draw your attention to the use in this letter of codes. Do you see that this letter refers to two codes: Code 620 and Code 615. Do you see that? A Yes, I do. Q Do you have an understanding of what the reference to these codes are? A These are codes that are used within our payroll system. Q So these are New York Times payroll codes? A Yes. Q And the author of the letter, the Union secretary/treasurer, is making reference to New York Times payroll codes? A Yes. Q Thank you. I now want to draw your attention to Exhibit 7. A Okay.
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¹ ARBITRATION	1 ARBITRATION
² sir?	the term a "Form 5500"?
³ A Yes, I do.	3 A Yes, I have.
4 Q And what is this document?	4 Q And what is your understanding of a
5 A This is yet another letter from the	5 Form 5500?
6 Union to Thomasina McMillan, our manager of	6 A A Form 5500 is required to be filed
payroll.	by plans, and it lays out all the financials
8 This time it is signed by two of my	of a plan and all the pertinent information
⁹ fellow trustees, the president of the Union,	9 regarding a plan.
Doug Panattieri, and the secretary/chair,	Q And did the NMDU Pension Fund file
Stephen Goldstein.	annual Form 5500s?
And this letter, too, represents a	12 A They did file 5500s.
movement of a half percent from the Welfare	Q And have you reviewed Form 5500s
to the Pension.	filed by the Pension Fund?
Q And did you see this letter on or	15 A Yes, I have.
around the time it was sent?	16 Q And did the information contained
17 A Yes.	in those Form 5500s have an impact on your
Q And what did this letter imply to	understanding regarding the proper base unit
you about the basis on which The Times was	measure for the 70 percent decline test for
obligated to contribute to the Pension Fund?	partial withdrawal liability?
A Once again, it indicated to me that	MR. RICHMAN: Can we have some
the Union viewed our contributions based on	understanding with respect to these
the percentage of wage.	documents as to when he had reviewed
24 Q Thank you.	them?
25 Mr. Hayes, have you ever heard of	25 MR. MILLER: I will get there
ivii. Hayes, have you ever heard or	WIK. WILLER. I will get there
Page 156	Page 157
	rage 107
1 ARBITRATION	1 ARBITRATION
1 ARBITRATION	1 ARBITRATION
1 ARBITRATION 2 in due course.	ARBITRATION point of when he looked at these?
1 ARBITRATION 2 in due course. 3 MR. RICHMAN: Well, he's asking	ARBITRATION point of when he looked at these? Seems to me pretty important if he is simply going to be reading something
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	Page 158	Page 159
1	ARBITRATION	1 ARBITRATION
2	there. We'll start with that one.	² A Yes.
3	Go ahead.	Q And can you turn to the bottom of
4	A Yes, I did review some Form 5500s.	that page and the discussion of contribution
5	Q And what was the process by which	5 rate.
6	you obtained Form 5500s to review?	6 A Yes. This particular page shows
7	A I had asked someone to supply me	that the contribution rate is 6 percent of
8	with the latest Form 5500s that we had and	8 wages.
9	that's what I reviewed.	9 Q I'd now like to have you take a
10	Q And for what purpose did you review	look at what's been marked I'm sorry
11	these Form 5500s at that time?	what is Exhibit 70.
12	A I wanted to see what the Fund had	12 A Yes.
13	stated in the 5500, what the contribution	Q And this is also a Form 5500?
14	rate was.	A Yes, this is Form 5500 or Plan Year
15	Q And do you recall looking at the	¹⁵ 2007.
16	Form 5500 for 2006, which is Exhibit 69, on	Q And can you turn your attention to
17	or around the time of the C & S closing?	the page marked FUND-0001999.
18	A I looked at several forms around	A I have it.
19	that closing. This may have been one of	Q And what does that document and
20	them. I can't say if it was or not. But I	that page say in connection with the heading
21	did review 5500s.	Contribution Rate?
22	Q Let's turn to the page I previously	A Contribution Rate here says, "6 and
23	referred to which is	a half percent of wages effective June 1,
24	A I'm sorry?	1999," followed by another line that says,
25	Q FUND-0001759.	"6.5 percent of wages effective January 1,
	Page 160	Page 161
1	-	
1 2	ARBITRATION	1 ARBITRATION
	ARBITRATION 2008."	ARBITRATION Q And who is Mr. Cavallaro?
2	ARBITRATION 2008." Q In connection with your review of	ARBITRATION And who is Mr. Cavallaro? Tom Cavallaro is vice president of
2	ARBITRATION 2008." Q In connection with your review of Form 5500s at or around the time of the	ARBITRATION ARBITRATION And who is Mr. Cavallaro? A Tom Cavallaro is vice president of Finance.
2 3 4	ARBITRATION 2008." Q In connection with your review of Form 5500s at or around the time of the C & S closing, do you recall whether the	ARBITRATION Q And who is Mr. Cavallaro? A Tom Cavallaro is vice president of Finance. Q And would Mr. Cavallaro or others
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2 3 4 5 6	ARBITRATION 2008." Q In connection with your review of Form 5500s at or around the time of the C & S closing, do you recall whether the discussion of contribution rate in those Form 5500s was put in the similar language	ARBITRATION Q And who is Mr. Cavallaro? A Tom Cavallaro is vice president of Finance. Q And would Mr. Cavallaro or others in the Finance Department report to you on this issue?
2 3 4 5 6 7	ARBITRATION 2008." Q In connection with your review of Form 5500s at or around the time of the C & S closing, do you recall whether the discussion of contribution rate in those	ARBITRATION ARBITRATION And who is Mr. Cavallaro? A Tom Cavallaro is vice president of Finance. And would Mr. Cavallaro or others in the Finance Department report to you on this issue? A I only had conversations about this
2 3 4 5 6 7 8	ARBITRATION 2008." Q In connection with your review of Form 5500s at or around the time of the C & S closing, do you recall whether the discussion of contribution rate in those Form 5500s was put in the similar language in each one of the forms in which you	ARBITRATION ARBITRATION And who is Mr. Cavallaro? A Tom Cavallaro is vice president of Finance. And would Mr. Cavallaro or others in the Finance Department report to you on this issue? A I only had conversations about this
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION 2008." Q In connection with your review of Form 5500s at or around the time of the C & S closing, do you recall whether the discussion of contribution rate in those Form 5500s was put in the similar language in each one of the forms in which you reviewed? A Yes. Q And what was that language? A That language was percentage of wage. Q Thank you. Following the closing of C & S, what, if anything, did you do to make sure that a 70 percent decline in contribution base units did not occur? A I had requested that our Finance Department keep track of what our contribution rates were. Q And who at the Finance Department	ARBITRATION Q And who is Mr. Cavallaro? A Tom Cavallaro is vice president of Finance. Q And would Mr. Cavallaro or others in the Finance Department report to you on this issue? A I only had conversations about this with Tom, and I would just periodically he and I would discuss the Funds and we would discuss where am I on my contribution rate to the NMDU Fund, how am I doing. Q And did you have an understanding that the Finance Department was monitoring a decline in pensionable contribution? A Yes. Q And what was your understanding of the basis upon which they were monitoring that decline? A They were monitoring the percentage of wage to make sure that we didn't touch that point.

Page 162 Page 163 1 1 **ARBITRATION** ARBITRATION 2 2 A His review showed year by year that with the loss of that circulation. 3 3 we were okay. While there was pressure to cut 4 4 At one point, he did tell me you're costs, we made a conscious decision not to 5 5 within a million dollars of that point, so do that 6 6 we had our eyes on it. Q Not to do what? 7 Q And what, indeed, was the time 7 Not to reduce the headcount. Α 8 8 frame of these communications? Is there anything you would have 9 9 done differently had you believed that These communications took place 10 The Times was close to or about to trigger a 10 probably around the fund period where the 11 Fund would report or during the September 11 partial withdrawal? 12 12 time period. Yes. The Times always has the 13 13 Those were kind of the benchmarks ability to bring more work back in, so at 14 14 any time I could have brought work back into for me. 15 15 Q As a consequence of the The Times and hired people associated with 16 communications with the Finance Department, 16 that work. 17 were there any actions that you took or 17 During the years following the 0 18 chose not to take because you did not want 18 C & S closing, did The Times ever 19 wages to fall any further? 19 communicate with the Pension Fund with 20 A Yes. Under the closing agreement, 20 regard to the 70 percent decline and 21 there was a paragraph that stated that if a 21 relevant base units? 22 certain number of papers would drop below 22 Yes Α the 7, we could send more work out. And if 23 23 Q I'd like to draw your attention to 24 there was enough of that occurring, we had 24 Exhibit 14. 25 the ability to reduce headcount associated 25 Do you recognize this document? Page 164 Page 165 1 1 **ARBITRATION ARBITRATION** 2 2 because I am a trustee on that Fund, so it A Yes. This is a letter from Tony 3 3 Benton, who is our senior vice president of was suggested that he make the request. 4 4 Did The Times, to your knowledge, Finance, to the NMDU Fund requesting a 5 withdrawal liability estimate. 5 ever receive a response to this letter? 6 And what was the date of this 6 No, we did not. Q Α 7 7 And let me draw your attention to request? 8 8 Paragraph 4 on Page 2 of this letter. A The letter's dated January 22, 9 9 2009. And did The Times, to your 10 Q And, temporally, what was that date 10 knowledge, in particular ever receive a 11 relative to the C & S closing? 11 response to the requested information in A It was very close to the C & S 12 12 Paragraph 4 of this letter? 13 closing. We closed C & S on January 4th of 13 No. we did not. Α 14 14 I'd now like to draw your attention that year. 15 Q Were you involved in the 15 to Exhibit 56. And when doing so, Mr. Hayes 16 preparation of this letter? 16 and Mr. Arbitrator, please focus your 17 17 Yes, I was. attention on the second page of the letter 18 And who is Mr. Anthony Benton? 18 which has a heading entitled "Mercer." Q 19 As I stated, he's our senior vice 19 It's the second page of the 20 president of Finance. And at the time he 20 document, it's a separate letter. 21 Mr. Haves, do you recognize this was corporate controller. 21 22 Q And why did he sign the letter? 22 document? 23 He signed the letter after he and I 23 A Yes. It is a letter from Mercer to 24 discussed it, pretty much. I decided that 24 the NMDU Pension Fund. 25 it was better to come from him than from me 25 O And who is Mercer?

	Page 166		Page 167
1	ARBITRATION	1	ARBITRATION
2	A Mercer was our outside consultant	2	asked for full calculations, contribution
3	that we hired to work with us on all of our	3	base units, just as we did before. The same
4	pension funds, all our multiemployer funds.	4	requests.
5	Q And can you turn to the second page	5	Q Did The Times' consultant Mercer,
6	of the letter. It's got the Bates stamp	6	to your knowledge, ever receive an estimate
7	NYT-001964.	7	of withdrawal liability for the period
8	A Yes.	8	requested in this letter?
9	Q And you'll see there are some names	9	A No, they did not.
10	at the bottom aligned with the word "copy."	10	Q Did The New York Times, to your
11	Who are those individuals?	11	knowledge, ever receive an estimate of
12	A Vince DiMaggio was vice president	12	withdrawal liability for the plan years
13	with us, James Dexter and Mitchell Hoffman.	13	requested in this letter?
14	We were part of the Mercer firm at this	14	A No, we did not.
15	time.	15	Q To your knowledge, did the Pension
16	Q And were these the individuals that	16	Fund ever send any of the requested
17	The Times had hired to consult with you on	17	information in this letter?
18	multiemployer fund issues?	18	A To my knowledge, they did not.
19	A Yes.	19	Q Did you have any conversations with
20	Q And can you summarize the	20	others at The Times about the Fund's failure
21	information requested in Paragraphs 1 and 2	21	to answer both this request and the prior
22	of this letter?	22	request that we examined a moment ago?
23	A Once again, this is a request for	23	A Yes. We had internal discussions
24	withdrawal liability information.	24	about the inability for us to get
25	This letter is dated 2010. We	25	information that we asked for from the Fund.
	Page 168		Page 169
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION Q Now, I think you testified earlier	2	ARBITRATION belief as to why the Pension Fund was
2	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee	2 3	ARBITRATION belief as to why the Pension Fund was seeking that information?
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2 3 4 5 6 7 8	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee meetings where issues involving The New York Times were discussed. Do you remember that testimony? A Yes, I do. Q When did the meetings at which you	2 3 4 5 6 7 8	ARBITRATION belief as to why the Pension Fund was seeking that information? A I felt this was one of the thoughts they had, that they may be able to create a partial withdrawal with that claim. Q And what was your understanding of that claim?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee meetings where issues involving The New York Times were discussed. Do you remember that testimony? A Yes, I do. Q When did the meetings at which you were recused begin to occur? A Beginning of 2009. Q And as a consequence of these recusals, did you form a belief as to what the Fund's intentions were in connection with The Times? A Yes. I felt that the Fund was trying to determine if it could establish a basis for a partial withdrawal. Q Did there ever come a time in which the Pension Fund contacted The New York	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	ARBITRATION belief as to why the Pension Fund was seeking that information? A I felt this was one of the thoughts they had, that they may be able to create a partial withdrawal with that claim. Q And what was your understanding of that claim? A My understanding of that claim is that they claimed that the companies that we had farmed the work out to were under our control and we had simply just done away with the Union members, hired in the back room somewhere these other companies and these employees were now doing the work. Q And did you form a belief about whether that action as alleged by the Fund might give rise to or have the Fund think it gave rise to a partial withdrawal?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee meetings where issues involving The New York Times were discussed. Do you remember that testimony? A Yes, I do. Q When did the meetings at which you were recused begin to occur? A Beginning of 2009. Q And as a consequence of these recusals, did you form a belief as to what the Fund's intentions were in connection with The Times? A Yes. I felt that the Fund was trying to determine if it could establish a basis for a partial withdrawal. Q Did there ever come a time in which the Pension Fund contacted The New York Times with a request for information about	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION belief as to why the Pension Fund was seeking that information? A I felt this was one of the thoughts they had, that they may be able to create a partial withdrawal with that claim. Q And what was your understanding of that claim? A My understanding of that claim is that they claimed that the companies that we had farmed the work out to were under our control and we had simply just done away with the Union members, hired in the back room somewhere these other companies and these employees were now doing the work. Q And did you form a belief about whether that action as alleged by the Fund might give rise to or have the Fund think it gave rise to a partial withdrawal? A I absolutely felt that that was
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee meetings where issues involving The New York Times were discussed. Do you remember that testimony? A Yes, I do. Q When did the meetings at which you were recused begin to occur? A Beginning of 2009. Q And as a consequence of these recusals, did you form a belief as to what the Fund's intentions were in connection with The Times? A Yes. I felt that the Fund was trying to determine if it could establish a basis for a partial withdrawal. Q Did there ever come a time in which the Pension Fund contacted The New York Times with a request for information about The Times' relationship to third-party	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION belief as to why the Pension Fund was seeking that information? A I felt this was one of the thoughts they had, that they may be able to create a partial withdrawal with that claim. Q And what was your understanding of that claim? A My understanding of that claim is that they claimed that the companies that we had farmed the work out to were under our control and we had simply just done away with the Union members, hired in the back room somewhere these other companies and these employees were now doing the work. Q And did you form a belief about whether that action as alleged by the Fund might give rise to or have the Fund think it gave rise to a partial withdrawal? A I absolutely felt that that was what they were after.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee meetings where issues involving The New York Times were discussed. Do you remember that testimony? A Yes, I do. Q When did the meetings at which you were recused begin to occur? A Beginning of 2009. Q And as a consequence of these recusals, did you form a belief as to what the Fund's intentions were in connection with The Times? A Yes. I felt that the Fund was trying to determine if it could establish a basis for a partial withdrawal. Q Did there ever come a time in which the Pension Fund contacted The New York Times with a request for information about The Times' relationship to third-party wholesalers?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION belief as to why the Pension Fund was seeking that information? A I felt this was one of the thoughts they had, that they may be able to create a partial withdrawal with that claim. Q And what was your understanding of that claim? A My understanding of that claim is that they claimed that the companies that we had farmed the work out to were under our control and we had simply just done away with the Union members, hired in the back room somewhere these other companies and these employees were now doing the work. Q And did you form a belief about whether that action as alleged by the Fund might give rise to or have the Fund think it gave rise to a partial withdrawal? A I absolutely felt that that was what they were after. Q I would like to now draw your
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee meetings where issues involving The New York Times were discussed. Do you remember that testimony? A Yes, I do. Q When did the meetings at which you were recused begin to occur? A Beginning of 2009. Q And as a consequence of these recusals, did you form a belief as to what the Fund's intentions were in connection with The Times? A Yes. I felt that the Fund was trying to determine if it could establish a basis for a partial withdrawal. Q Did there ever come a time in which the Pension Fund contacted The New York Times with a request for information about The Times' relationship to third-party wholesalers? A Yes, we did get a communication	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION belief as to why the Pension Fund was seeking that information? A I felt this was one of the thoughts they had, that they may be able to create a partial withdrawal with that claim. Q And what was your understanding of that claim? A My understanding of that claim is that they claimed that the companies that we had farmed the work out to were under our control and we had simply just done away with the Union members, hired in the back room somewhere these other companies and these employees were now doing the work. Q And did you form a belief about whether that action as alleged by the Fund might give rise to or have the Fund think it gave rise to a partial withdrawal? A I absolutely felt that that was what they were after. Q I would like to now draw your attention to Exhibit 77.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION Q Now, I think you testified earlier that you were recused from certain trustee meetings where issues involving The New York Times were discussed. Do you remember that testimony? A Yes, I do. Q When did the meetings at which you were recused begin to occur? A Beginning of 2009. Q And as a consequence of these recusals, did you form a belief as to what the Fund's intentions were in connection with The Times? A Yes. I felt that the Fund was trying to determine if it could establish a basis for a partial withdrawal. Q Did there ever come a time in which the Pension Fund contacted The New York Times with a request for information about The Times' relationship to third-party wholesalers?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION belief as to why the Pension Fund was seeking that information? A I felt this was one of the thoughts they had, that they may be able to create a partial withdrawal with that claim. Q And what was your understanding of that claim? A My understanding of that claim is that they claimed that the companies that we had farmed the work out to were under our control and we had simply just done away with the Union members, hired in the back room somewhere these other companies and these employees were now doing the work. Q And did you form a belief about whether that action as alleged by the Fund might give rise to or have the Fund think it gave rise to a partial withdrawal? A I absolutely felt that that was what they were after. Q I would like to now draw your

Page 170 Page 171 1 1 **ARBITRATION** ARBITRATION 2 2 Fund, Murray Schwartz in particular, and review that second paragraph. 3 3 answering his request for information Α 4 regarding the independent wholesalers that 4 At the time of this letter, had the 5 5 were now delivering the papers. Fund raised any allegation of a 70 percent 6 6 Q And take a moment and then I'd like contribution decline? 7 7 you to briefly summarize what The Times and Α No, they had not. 8 8 you indicated in this letter. Following this letter, did the Fund 9 9 What this letter stated to the tell you that it was considering whether a 10 10 Union and to the Fund was that these were 70 percent CBU decline had occurred? 11 11 independent wholesalers not under our No, they did not. 12 12 control, not part of any companies that we Now I would like to draw your O13 owned, and, therefore, their thought that 13 attention to Exhibit 1. 14 14 there was a withdrawal, partial withdrawal Do you recognize this document, 15 15 based on that was not true, had no basis for sir? 16 16 Yes, I do. Α 17 17 They had requested confidential And what is this document? O18 18 information like contracts and all of those This is the Pension Fund's demand 19 19 things. And we basically said to them, letter based on a partial withdrawal from 20 there's no basis for any of that, either. 20 the Fund based on the C & S closure. 21 Q Now I'd like to draw your attention 21 Q And what is your understanding of 22 22 to Page 2 of the letter and the second the basis for CBUs in connection with the paragraph of the letter. 23 23 assertion of a partial withdrawal that is 24 Yes. 24 set forth in this letter? A 25 And can you please take a moment 25 This letter states that it's based Α Page 172 Page 173 1 1 **ARBITRATION** ARBITRATION 2 2 on shifts. (A brief recess was 3 Q And what was your reaction when you taken.) 4 4 received this letter in September 2013 and CROSS EXAMINATION BY MR. RICHMAN: 5 learned that the Fund was asserting partial 5 Mr. Hayes, how are you today? 6 withdrawal liability on the basis of a 6 I'm good. Thank you. Α 7 7 70 percent decline related to CBUs as Good. 8 8 shifts? So in July 2000, you became the 9 vice president of Labor Relations at 9 Α I was very surprised by that. 10 And why was that? 10 The Times? 11 11 The only theory that we had seen A When? 12 from them was the theory of the control 12 July of 2000? O 13 13 issue in my letter that I stated just A 2006. 14 previous. And I had requested in that 14 2006. My "6" looks like a zero. O 15 letter if you have any other theory, please 15 Okav. 16 let us know, but if we don't hear from you, 16 And so when you became the vice 17 17 then we believe that you agree with us that president of Labor Relations in 2006 in 18 18 it is percentage of wages. July, did you read the collective bargaining 19 I hadn't heard a word until this 19 agreement between The Times and the NMDU? 20 20 letter arrived. A The MOA that was in place, yes, and 21 MR. MILLER: No further 21 the contract, yes. 22 22 questions at this time. Q And the contract. When we talk 23 MR. RICHMAN: Take a couple 23 about the contract -- let me show you 24 24 Exhibit 8, so we are all talking about the minutes

25

MR. MILLER: Sure.

25

same thing.

	Page 174		Page 175
1	ARBITRATION	1	ARBITRATION
2	When you just answered "contract,"	2	to The New York Times?
3	Exhibit 8 is the contract to which you were	3	A No.
4	referring?	4	Q And did there come a time when
5	A Yes, this is the contract.	5	Mr. Mangan ceased being the counsel to the
6	Q Okay.	6	Pension Fund?
7	When you became a trustee of the	7	A Yes.
8	Pension Fund, who was counsel to the Pension	8	Q And who took his place?
9	Fund?	9	A It was taken by, I can't remember
10	A At that time, I'm not sure. I	10	the young lady's name now, but they brought
11	think it was Warren.	11	in a whole new firm at one point.
12	Q Warren Mangan.	12	Q Does the name Elizabeth O'Leary
13	A And Neal Schelberg.	13	ring a bell?
14	ARBITRATOR IRVINGS: Warren	14	A It was before Elizabeth. Elizabeth
15	MR. RICHMAN: M-A-N-G-A-N. Or	15	came as part of the deal, so it was before
16	some form of that.	16	Elizabeth.
17	BY MR. RICHMAN:	17	Q So there was a deal
18	Q What firm is Mr. Schelberg from?	18	A There was Jani
19	A Proskauer.	19	Q Jani Rachelson?
20	Q And Proskauer provides what to	20	A Yes.
21	The New York Times?	21	Q So Jani Rachelson was there for a
22	A Labor counsel.	22	period of time?
23	Q Labor counsel?	23	A Yes.
24	A Yes.	24	Q And she's been counsel to the
25	Q And Mr. Schelberg provides counsel	25	Pension Fund?
	And Mr. Schelderg provides counser		r choion r und:
	Page 176		Page 177
1	ARBITRATION	1	ARBITRATION
2	A That's correct.	2	A I don't recall off the top of my
3	Q And then is that when the deal was	3	head. I'm sorry.
4	made for Elizabeth O'Leary to come in?	4	Q Mitchell Lewis, does that ring a
5	A Elizabeth O'Leary came in to be	5	bell?
6	counsel to the Fund, and the Union trustees	6	A As an auditor?
7	brought in someone else.	7	Q Yes.
8	Q Irwin Bluestein?	8	A Maybe Mitch, yeah.
9	A Irwin Bluestein.	9	Q Maybe Mitch?
10	Q Was Mr. Schelberg counsel to the	10	A I'm on a couple funds. There's
11	Employer trustees?	11	names running through my head.
12	A Yes.	12	Q How many funds are you on?
13	Q And the other three counsel you	13	A I'm on a couple of funds.
14	mentioned were counsel to the Union	14	Q "Couple" as in two?
15	trustees?	15	A Yes.
16	A Elizabeth at one point was the	16	Q So you don't know whether Mr. Lewis
17	Union trustee, but then at one point she	17	was the auditor to the Fund?
18	became sort of like tied to the director.	18	A I believe he was.
19	Q Okay.	19	Q But you're not sure?
20	And that director is Murray	20	A No.
21	Schwartz?	21	Q And is he still the auditor to the
22	A Murray Schwartz.	22	Fund?
23	Q And now who was the auditor to the	23	A If he was, he is.
24	Fund during the time that you've been a	24	Q If he was, he is. Okay.
25	trustee?	25	During the time you've been a
		I	

Page 178	Page 179
1 ARBITRATION	1 ARBITRATION
trustee, who was the actuary to the Fund?	2 Q And counsel came to the meetings?
A That would be Segal.	3 A Yes.
4 Q And was there a specific individual	4 Q And when I'm talking about
5 at Segal who performed the actuary services	5 meetings, for the record it's clear we're
for the Fund?	talking about meetings of the Pension Fund?
7 A There were two representatives at	7 A Yes.
8 Segal on the Fund.	8 Q What was the nature of your
⁹ Q And who were they?	9 relationship, let's take counsel to the
A God. Horrible with names. One was	¹⁰ Funds?
John Urbank and then there was a young lady	11 A Just they were there at the
with him.	meetings. We would ask them for legal
13 Q Rosana Egan?	guidance on different issues. They would
14 A Rosana.	give us their position.
Q And which one of those was the	15 Q Okay.
actuary?	Did you have a relationship at all
A I think Rosana was. I think John	with Mr. Lewis?
was just the lead guy.	18 A No.
19 Q And did both of them come to	Q Did you ever talk to him outside of
trustee meetings while you were a trustee?	the meetings?
21 A Yes.	21 A No.
Q And did the auditor, if it was	Q How about legal counsel, have you
23 Mr. Lewis or any other auditor, come to the	ever talked to them outside of the meetings
meetings while you were a trustee?	about Pension Fund matters?
25 A Yes.	25 A Yes.
	11 240.
Page 180	Page 181
Page 180 ARBITRATION	Page 181 ARBITRATION
ARBITRATION Q And with whom did you speak?	ARBITRATION Q Had you ever talked to him outside
1 ARBITRATION	1 ARBITRATION
ARBITRATION Q And with whom did you speak?	ARBITRATION Q Had you ever talked to him outside
ARBITRATION ARBITRATION AND	ARBITRATION ARBITRATION Had you ever talked to him outside of Fund meetings? A If there was an issue regarding the Fund, yes.
ARBITRATION ARBITRATION AND	ARBITRATION ARBITRATION Had you ever talked to him outside of Fund meetings? A If there was an issue regarding the Fund, yes. And what issue regarding the Fund
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ARBITRATION ARBITRATION AN Operation of the management trustees on an issue. Anybody else? A	ARBITRATION Q Had you ever talked to him outside of Fund meetings? A If there was an issue regarding the Fund, yes. Q And what issue regarding the Fund did you talk to him about? A It could be almost anything having to do with if we were looking at some type of changing someone, some money market person. If we were going to try to put the funds in some other vehicle, he might talk about that with us. But that was pretty much it. Q You ever talked with Mr. Schwartz about how the Fund calculated withdrawal
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¹ ARBITRATION	¹ ARBITRATION
² A No.	² yes.
³ Q You ever talk to Mr. Schwartz about	³ Q Fortunately or unfortunately?
anything related to contribution base units?	⁴ A Fortunately.
5 A No.	⁵ Q Who are the contributing employers
6 Q Do you know what a contribution	6 of the Fund?
base unit is?	A All the we've got the Daily
8 A Yes.	8 News, we've got the Post, we've got
9 Q What is it?	The Times, we've got the Jersey paper I
A It's the basis on which the company	can't think of right now. But, yes.
makes its contribution to the Fund.	11 Q Okay.
Q Okay. And is that the same or	12 And the papers are in the
different than a contribution rate:	publishing madsity, correct, an the papers
it's the same.	you mentioned:
Q it's the same. Okay.	11 103.
Now, you testified something about on your direct about what's	Q And what is the outlook for that industry?
happening in the industry.	18 A Not promising.
19 A Yes.	19 Q And what's because of what?
Q I want to spend a minute or two	A Advertising dollars are down,
talking about that.	subscriptions are down because of the Web.
22 A Okay.	Free news. Everybody wants it for free all
Q You are quite familiar with the	the time.
industry, correct?	Q That is always a problem.
A I'm familiar with the industry,	Do you have any reason to believe
	- 105
Page 184	Page 185
¹ ARBITRATION	¹ ARBITRATION
ARBITRATION that the industry will not continue to	1 ARBITRATION 2 York Times?
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Page 186	Page 187
1 ARBITRATION	1 ARBITRATION
2 certain discussions, did you do anything	2 A No.
else to recuse yourself?	There was at one point someone else
4 A I'm not sure I understand the	at Proskauer who was representing us when
5 question.	the theory was withdrawal based on control.
· · · · · · · · · · · · · · · · · · ·	6 Q Okay.
Okay. Okay. Well, was the only thing that you	7 And you in fact wrote a letter, did
8 thought you had to do in order to recuse	8 you not?
9 yourself from let me withdraw that	9 A Yes.
question.	Q To Mr. Schwartz with respect to
Why did you think you had to recuse	that issue of control?
12 yourself?	12 A That's correct.
A The trustees had asked that we do	Q And you wrote that letter at the
that. This came from the trustees.	time that you were a trustee?
15 Q Okay.	15 A Correct.
Did you understand why?	Q And you were trying to convince
A Well, I certainly understood why.	Mr. Schwartz that The New York Times did not
Q And why was that?	have control, correct?
And why was that: A Because they were going to be	19 A No, I was not trying to convince
discussing The New York Times.	him of anything. He had written me a letter
21 Q Okay.	to ask me for information directly I think
Did you ever discuss The New York	22 as my role as the senior executive at the
23 Times' partial withdrawal liability with	23 time.
Neal Schelberg or anyone else from	So I answered that in that role as
25 Proskauer?	25 senior executive at the time.
Floskauer?	senior executive at the time.
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rage 100	1 age 105
_	1 ARBITRATION
¹ ARBITRATION	1 ARBITRATION
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Page 190 Page 191 1 1 **ARBITRATION ARBITRATION** 2 2 Before I arrived in July 2006. York Times was this agreement. 3 3 O And when you read that and MR. MILLER: But you haven't 4 particularly the part that mentions, "The 4 established that he in fact looked at 5 5 publisher agrees it shall contribute this language and formed an opinion 6 6 8 percent of each employee's pay rate per about this language at the time he 7 7 shift for each shift worked by each employee saw it. 8 8 in the bargaining unit" -- I'm shortening ARBITRATOR IRVINGS: Let me 9 9 it -- "to the Pension Fund." short-circuit this. 10 10 What did -- let's take the first I don't know how people testify as 11 11 phrase, "per shift." to their interpretation of an agreement. 12 What did that mean to you? 12 They can testify as to how it's been 13 13 MR. MILLER: Objection. Lack implemented. But just as I'm not going 14 14 of foundation. Obviously, the to have your witnesses come in and say we 15 15 agreement was entered 25 years before believe this agreement means this and he 16 16 he got to The New York Times, but believes it means something else. So ... 17 17 there's been no foundation that he in MR. RICHMAN: Here's the 18 fact read this particular language in 18 difference here. 19 19 2006 and formed an opinion as to what He has testified on direct all 20 it meant at that juncture. 20 sorts of times about how it was clear to 21 21 MR. RICHMAN: Well, there's no him that the basis of contributions was 22 22 other agreement that has this wages. And I think that if anyone had 23 23 language, at least not according to done, even the first thing that one would 24 24 The New York Times, because the only expect someone to do trying to figure out 25 language that was produced by The New 25 the basis on which a contribution was Page 192 Page 193 1 **ARBITRATION** 1 ARBITRATION 2 2 made might actually read the contract. to Mr. Richman's question. And so I can go back and ask him 3 But because he did not testify that 3 4 4 whether he read this language, and any of the bases that formed his 5 5 certainly I want to ask him what he impression was his reading and 6 6 thought this meant because I'm interpretation of the contract, at this 7 7 cross-examining him on his belief. juncture to ask him what he thinks the 8 8 ARBITRATOR IRVINGS: Fair contract means falls squarely in your 9 9 enough. admonition that you don't allow such 10 10 MR. MILLER: But, testimony. Mr. Arbitrator, may I be heard? 11 11 ARBITRATOR IRVINGS: Well, let 12 12 ARBITRATOR IRVINGS: You could me say this. I go back and I look at 13 13 his testimony and he was asked about be heard, ves. 14 14 MR. MILLER: That's another way if he believed it was wages not 15 of saying I want to know what his 15 shifts based on everything he had 16 16 interpretation of the contract was. seen between the Union and The Times. 17 17 And during my direct I asked him So, yes, you can go into it. 18 18 what the bases were for his belief that However, let me say this: I don't find 19 19 contribution base units equal shifts. it probative, okay, on either side. 20 20 He did not in response to that MR. MILLER: Thank you. 21 21 MR. RICHMAN: But let me just direct testimony indicate that one of the 22 22 make one other comment because this bases was his reading an interpretation 23 23 is a different situation. This is a of the contract. 24 24 If I had and if he had given that witness who is saying, look, I had to 25 25 answer, that would have opened the door figure out whether we're going to

	Page 194	Page 195
1	ARBITRATION	
2		MOTITATION
3	have a partial withdrawal or not. And so I went about all these	respective withesses about now they
4		interpret the confider now doesn't do
5	different ways to try to figure out what the partial withdrawal was. And	 anything for me. MR. RICHMAN: Okay. I'll just
6	I asked the Fund for on two	6 end with this. All I wanted to
7	occasions, they never responded.	7 understand is when he came to his
8	And if he really wanted to find out	8 conclusion, how he came to the
9	whether there was a partial withdrawal,	conclusion, now he came to the conclusion with respect to I mean,
10	he might start with reading the contract.	he said he read the contract. He
11	ARBITRATOR IRVINGS: You can	said he read it at or about or before
12	certainly ask him if he read the	the time he arrived at The New York
13	contract, which actually he said he	Times.
14	did.	So before he reached his
15	But the next step is to start	conclusion, he had read the contract.
16	interpreting the contract, I just	16 ARBITRATOR IRVINGS: Uh-huh.
17	ultimately, issues of how it was	MR. RICHMAN: And in reading
18	implemented, statements made, those type	the contract, I just wanted to know
19	of things, fine. But, you know,	what his understanding was.
20	interpretations now don't do it.	MR. MILLER: A contract that we
21	If there were statements, if there	submit was in the abstract ambiguous
22	were declarations from either side, this	and you need to understand practices
23	is what we're maintaining it means,	in order to interpret it.
24	that's helpful information.	I think you've indicated what
25	But getting a debate now from your	weight you'll give it.
	Page 196	Page 197
1	ARBITRATION	¹ ARBITRATION
2	ARBITRATION ARBITRATOR IRVINGS: You are	ARBITRATION Q So you never were interested in
2	ARBITRATION ARBITRATOR IRVINGS: You are free to examine.	ARBITRATION Output Output ARBITRATION Output Outp
2 3 4	ARBITRATION ARBITRATOR IRVINGS: You are free to examine. MR. RICHMAN: Okay.	ARBITRATION Online ARBITRATION Online Online ARBITRATION Online Nowing how other contributing employers contributed to the Fund?
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	Page 198		Page 199
1	ARBITRATION	1	ARBITRATION
2		2	
3	And then I looked at it again, of course,	3	context.
4	when we started talking about shutting it	4	And then what I'm focused on is K.
5	down.	5	Had you seen this language during
6	Q When we are talking about "shutting	6	the time that there were internal
	it down, you are talking about shatting		discussions at The New York Times about
7			shutting C & S down?
8	11 105.		A We never focused on this language.
9	Q And when was that?	9	Q Never focused on this language?
10	A That would have been in 2008.	10 11	A No.
11	Q Okay.		Q Why not?
12	You see this contract on the first	12	A We were closing C & S down, so
13	page it says it extends the collective	13	provisions of the agreement, once it was
14	bargaining agreement which expires on	14	closed, would be gone.
15	March 30, 2008 until March 30, 2020.	15	Q Okay. Doesn't this language
16	Do you see that?	16	indicate to you how C & S was contributing
17	A Yes.	17	to the Pension Fund?
18	Q And was that, in your mind	18	A How they were contributing was not
19	that's accurate, correct?	19	important to me if I was shutting it down.
20	A Yes, that's what it says.	20	Q It wasn't important to you?
21	Q All right.	21	A Not when I was shutting it down.
22	And if you take a look at Page 7 of	22	Q Okay. Thank you.
23	the contract, and particularly language	23	Do you have any idea what the term
24	under K. This is the Roman Numeral VI, it	24	in the fifth line of K "full shift
25	starts on Page 4. Just so you have the	25	contribution" means?
	Page 200		Dama 201
	, and the second		Page 201
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION MR. MILLER: Objection.	2	ARBITRATION than the rates?
	ARBITRATION MR. MILLER: Objection. Mr. Arbitrator, he's asking for an	2	ARBITRATION than the rates? A I'd have to look at the MOAs to see
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	Page 202		Page 203
1	ARBITRATION	1	ARBITRATION
2	beginning of that paragraph and ending in	2	you asking him the practice as he
3	the line that says "First day of	3	understands it or, again, an
4	absence"	4	interpretation of the contract?
5	Do you see that going down?	5	MR. RICHMAN: I'm asking for
6	A Yes.	6	him as his practice.
7	Q Has that language ever changed?	7	ARBITRATOR IRVINGS: Go ahead.
8	A I don't know. And the reason I	8	A Yes.
9	don't know, the literal reading says "for	9	Q Okay. And what kind of give me
10	each shift worked," but I'm pretty sure we	10	an example of one.
11	made contributions for shifts that are not	11	A When an employee is on vacation.
12	worked.	12	Q Okay. And what was the practice of
13	Q Okay.	13	The Times when an employee was on vacation?
14	A So when you ask me if it's changed,	14	A I believe we gave him a percentage
15	I can tell you that the practice doesn't	15	of wage.
16	follow what you see, so that's why you look	16	Q Okay. And how did you figure out
17	to the practice of the parties to understand	17	what that wage was?
18	how it's administered.	18	A We knew what his wage was, and we
19	Q Okay.	19	paid him that percentage of that wage for
20	And for what types of	20	that day.
21	contributions contributions are due on	21	Q For that day?
22	behalf of employees who haven't worked,	22	A For that day.
23	correct, under certain circumstances; is	23	Q And is it correct that a day is a
24	that right?	24	shift?
25	MR. MILLER: Objection. Are	25	A He didn't work.
	WK. WILLER. Objection. Are		71 THE GIGHT WOLK.
	Page 204		Page 205
1	Page 204 ARBITRATION	1	Page 205 ARBITRATION
1 2	ARBITRATION Q I understand he didn't work the	1 2	ARBITRATION Q Did you work with Mr. Baker?
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	Page 207
1 ARBITRATION	1 ARBITRATION
Do you see them on the second and	2 MR. MILLER: And my objection
third page?	is that Mr. Richman has not even laid
4 A Okay.	a foundation that Mr. Hayes
5 Q "in your possession are	5 understands and is knowledgeable
6 contributions for 23 shifts to the Welfare	6 about the payroll practices.
Fund and for 23 shifts to the Pension	We had testimony about the payroll
Fund" you see that "on behalf of	8 practices from somebody who is
9 Mr. Santiago Aguilar."	9 knowledgeable.
10 MR. MILLER: Mr. Arbitrator,	MR. RICHMAN: He knows what
11 I'm going to object to this line of	11 ARBITRATOR IRVINGS: You got
questioning on complete lack of	the answers you wanted from the
foundation.	witness who knew about payroll
Mr. Hayes was not at The Times in	practice.
2001. Mr. Richman has not established	You want to keep asking?
he's seen this letter.	MR. RICHMAN: I'm going. I'm
Mr. Richman has not established a	going. Sorry.
foundation that Mr. Hayes, unlike	18 BY MR. RICHMAN:
Mr. Claffee, is familiar with the payroll	Q Now, Mr. Hayes, let me show you
processes at The New York Times.	Exhibit 42.
MR. RICHMAN: All I'm going to	21 A Okay.
22 ask him is if what is described here	Q Have you ever seen these before?
comports with what his understanding	A I've seen this at some point.
is of The New York Times' practices,	Q Can you tell us at what point?
if he has one.	A Oh, within the last couple weeks.
ii iie iius olie.	on, whim the last couple weeks.
Page 208	Page 209
¹ ARBITRATION	¹ ARBITRATION
Q Oh, okay. I'm not interested at	testified on direct was that you read the
3 that point.	testified on direct was that you read the Form 5500.
that point. Okay. Prior to the Fund assessing	 testified on direct was that you read the Form 5500. A I read some 5500s. I've read a lot
 that point. Okay. Prior to the Fund assessing partial withdrawal liability against 	 testified on direct was that you read the Form 5500. A I read some 5500s. I've read a lot of 5500s since I've gotten the letter.
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	Page 210		Page 211
1	ARBITRATION	1	ARBITRATION
2		2	plan states for the world to see and
3	A Okay.	3	
4	Q Now, did you read that when you	4	understand how it operates, and it gives you
5	read the Form 5500?	5	all of its elements there.
	A No, I did not.	6	So that's why I went straight
6	Q So did you read the audit report	7	there.
7	this is part of an audit report.		Q And as I recall your testimony
8	If we go back to Page 1785, you can	8	before, to you, contribution rate is the
9	see the front page of that.	9	same thing as contribution base unit?
10	A Yes.	10	A Yes.
11	Q Did you read the audit report at	11	MR. RICHMAN: I don't need to
12	the time that you read the 5500s?	12	go through these one by one.
13	A As I said, I wasn't sure if this	13	BY MR. RICHMAN:
14	was one of the 5500s I reviewed.	14	Q Is it your testimony, Mr. Hayes,
15	Q Okay.	15	you never read an audit report from the
16	But there were audit reports that	16	Pension Fund?
17	you did review.	17	A I never said that.
18	A No. I was focused when I looked	18	MR. MILLER: Wait. Objection.
19	at the 5500s, I was focused in one place and	19	MR. RICHMAN: I'm asking. It's
20	I was looking at the contribution rate.	20	his testimony.
21	When I went to the Form 5500, I	21	Q Is it your testimony that you have
22	wanted to see how the Fund stated that.	22	never read an audit report from the Pension
23	So that's where my focus was.	23	Fund?
24	Q Why was that your focus?	24	MR. MILLER: No. Objection. I
25	A Because that's the form that the	25	think the implication I don't know
	Page 212		Page 213
1	_	1	Page 213 ARBITRATION
1 2	ARBITRATION	1 2	-
	ARBITRATION whether you're asking him whether he		ARBITRATION Fund?
2	ARBITRATION whether you're asking him whether he read audit reports during that	2	ARBITRATION Fund? A No.
2 3	ARBITRATION whether you're asking him whether he read audit reports during that 2008/2009 time frame or more broadly.	2	ARBITRATION Fund? A No. Q It's not your testimony?
2 3 4	ARBITRATION whether you're asking him whether he read audit reports during that 2008/2009 time frame or more broadly. MR. RICHMAN: I'm starting more	2 3 4	ARBITRATION Fund? A No. Q It's not your testimony? A No, I can't tell you when I did or
2 3 4 5	ARBITRATION whether you're asking him whether he read audit reports during that 2008/2009 time frame or more broadly. MR. RICHMAN: I'm starting more broadly and then I'll focus.	2 3 4 5	ARBITRATION Fund? A No. Q It's not your testimony? A No, I can't tell you when I did or did not read it.
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	Page 214		Page 215
1	ARBITRATION	1	ARBITRATION
2	Did you ask any ERISA counsel to	2	ARBITRATION A Yes.
3	review the Form 5500s of the Pension Fund at	3	Q And who was that counsel?
4	or around the time that you were working on	4	A It was Mr. Projansky.
5	the closing of C & S?	5	Q At Proskauer Rose?
6	MR. MILLER: Mr. Arbitrator, I	6	A Yes.
7	think this runs quite close to a	7	Q Did you ask The Times CFO to review
8	question that's covered by the	8	the Pension Fund's audit reports during the
9	attorney/client privilege.	9	time that you were working on shutting down
10	I think that the answer as to	10	C & S?
11	whether legal advice was sought is	11	A No.
12	probably okay, but I want to put the	12	Q Now, were you present at a board of
13	marker down now that Mr. Richman can go	13	trustees meeting of the Pension Fund when
14	no further.	14	there was a discussion of a payroll audit of
15	ARBITRATOR IRVINGS: The marker	15	C & S?
16	is glowing.	16	A I was there when they said that an
17	MR. RICHMAN: I would never	17	audit of C & S had been ordered, yes.
18	cross the marker.	18	We usually were told when they were
19	ARBITRATOR IRVINGS: Go ahead.	19	going to audit and who they were going to
20	MR. RICHMAN: I'll assure you.	20	audit. So, yes, I was there.
21	BY MR. RICHMAN:	21	Q Okay. Let me show you Exhibit 51
22	Q Can you answer that question,	22	first.
23	please.	23	A Okay.
24	A Yes.	24	Q Now, these are minutes of a
25	Q You did?	25	trustees meeting, correct?
		1	
	Page 216		Page 217
1	Page 216 ARBITRATION	1	Page 217 ARBITRATION
1 2		1 2	
	ARBITRATION		ARBITRATION
2	ARBITRATION A Yes.	2	ARBITRATION people I just's went through with you
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Page 218	Page 219
1 ARRITRATION	
THE THE THE	MADITATION
Tot an of them.	WIK. RICHWAIN. The said he read
2 This do you provide those documents	it. I want to know if
to anybody cisc at the times to read:	2 is there anything in this report
A No. In fact, they never leave my office.	that you looked at, that you read, whether it was inaccurate?
	it was inaccurate:
 Q Okay. If you look at Page 1247. A Yes. 	WIK. WILLER. But, again,
A I CS.	objection. He hasn't laid a foundation that Mr. Hayes is aware of
Q I list, did you read this report:	Toundation that Wir. Trayes is aware or
And this report meaning the April 20, 2010	the issues and has direct knowledge
retter from whitehen Lewis and Tvy 1	of the issues in payron practices
can't see the last name to Murray Schwartz.	that are addressed in the document.
Benwartz.	WIK. KICHWAN. All I did was ask
A Yes, I think I may have looked at this one.	him, were you concerned. ARBITRATOR IRVINGS: Yeah. I
	ARBITRATOR IRVINGS. Teall. 1
Q And when you say you think you may have looked at it, would that have been at	mean, he can answer he's not going to be able to answer whether in fact
the time that it was handed out at the	
	they were accurate, but whether he
trustees meeting:	had a concern about whether they were
71 Of sometime after, probably. Not	accurate.
at the meeting itself.	A I did ieview the document. I don't
2 Mi fight. This were you concerned	know it it's accurate, I can't say, but I
that anything in this report was maccurate:	did icview it.
MR. MILLER: Objection. Lacks foundation.	Q 110. What I'm asking you is, when
10undation.	you reviewed the document, were you
Page 220	Page 221
1 ARBITRATION	¹ ARBITRATION
2 concerned that the document was not	the second page, it says Mr. Lewis reviewed
accurate? The things in the document were	the final results of C & S payroll audit.
4 not the accurate?	4 You see that?
5 MR. MILLER: Same objection.	5 A Yes.
6 ARBITRATOR IRVINGS: This is	6 Q And were you in the room when that
about his state of mind then.	
	review occurred?
8 Go ahead.	review occurred:
8 Go ahead.	8 A I was in the room, but the reviews
 Go ahead. A No, I didn't look at it for 	8 A I was in the room, but the reviews
 Go ahead. A No, I didn't look at it for accuracy. 	8 A I was in the room, but the reviews 9 of Mr. Lewis' reports are not very in depth.
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	Page 222		Page 223
1	ARBITRATION	1	ARBITRATION
2	meeting?	2	talking about June of 2010 do you know
3	A I don't know if I looked at this	3	who got involved in this audit?
4	because it was only the followup to what we	4	A No, I don't. Not offhand. I'm
5	had obtained in April.	5	sure our Payroll folks were involved,
6	Q But this was in fact the result of	6	but
7	the audit, was it not?	7	Q When you say "our Payroll folks,"
8	A Yes.	8	to whom are you referring?
9	Q And it showed The New York Times	9	A People who work in Payroll.
10	owed the Pension Fund money, correct?	10	Q I was actually looking for some
11 12	A Right.	11 12	names.
13	Q And The New York Times paid that	13	A I can't tell you who. I don't
14	money, correct?	14	know. I would imagine I don't know. I don't know.
15	A Right. Q Did The New York Times protest	15	Q Would these people be down in
16	before paying that money?	16	Virginia or
17	A You know, I don't get involved in	17	A Yes, they would be down in
18	the audits, so I'm not really sure what the	18	Virginia. Morris would probably be
19	back and forth may have been.	19	involved, Morris Claffee. I think you met
20	Q Who would have been involved in the	20	him earlier.
21	audits?	21	Q Yes, I did meet him. Twice, in
22	A Our Payroll folks are involved in	22	fact.
23	the audits. Sometimes my folks get involved	23	A Yes, he would probably be one of
24	in the audits.	24	those folks.
25	Q Okay. At this time and we're	25	Q During the discussions that you had
	Page 224		Page 225
1	Page 224 ARBITRATION	1	Page 225 ARBITRATION
1 2		1 2	
	ARBITRATION	2	ARBITRATION
2 3 4	ARBITRATION internally at The New York Times concerning the closing of C & S, it's my understanding from your direct testimony that you by	2 3 4	ARBITRATION percentage of the liability was, the shortfall and the funding of the Fund. And so we kind of did, if you will,
2 3 4 5	ARBITRATION internally at The New York Times concerning the closing of C & S, it's my understanding from your direct testimony that you by that I mean you or somebody else in The New	2 3 4 5	ARBITRATION percentage of the liability was, the shortfall and the funding of the Fund. And so we kind of did, if you will, a back-of-the-envelope to figure out what
2 3 4	ARBITRATION internally at The New York Times concerning the closing of C & S, it's my understanding from your direct testimony that you by that I mean you or somebody else in The New York Times ran some models with respect	2 3 4 5 6	ARBITRATION percentage of the liability was, the shortfall and the funding of the Fund. And so we kind of did, if you will, a back-of-the-envelope to figure out what that withdrawal might be, what that partial
2 3 4 5 6 7	ARBITRATION internally at The New York Times concerning the closing of C & S, it's my understanding from your direct testimony that you by that I mean you or somebody else in The New York Times ran some models with respect to partial withdrawal liability.	2 3 4 5 6 7	ARBITRATION percentage of the liability was, the shortfall and the funding of the Fund. And so we kind of did, if you will, a back-of-the-envelope to figure out what that withdrawal might be, what that partial might be based on those numbers, because we
2 3 4 5 6 7 8	ARBITRATION internally at The New York Times concerning the closing of C & S, it's my understanding from your direct testimony that you by that I mean you or somebody else in The New York Times ran some models with respect to partial withdrawal liability. A Yes.	2 3 4 5 6 7 8	ARBITRATION percentage of the liability was, the shortfall and the funding of the Fund. And so we kind of did, if you will, a back-of-the-envelope to figure out what that withdrawal might be, what that partial might be based on those numbers, because we couldn't get any real good numbers to work
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2 3 4 5 6 7 8 9	ARBITRATION internally at The New York Times concerning the closing of C & S, it's my understanding from your direct testimony that you by that I mean you or somebody else in The New York Times ran some models with respect to partial withdrawal liability. A Yes. Q And do you know if those models still exist?	2 3 4 5 6 7 8 9	ARBITRATION percentage of the liability was, the shortfall and the funding of the Fund. And so we kind of did, if you will, a back-of-the-envelope to figure out what that withdrawal might be, what that partial might be based on those numbers, because we couldn't get any real good numbers to work with. Q Okay. And you couldn't get any
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Page 226	Page 227
1 ARBITRATION	1 ARBITRATION
² a partial withdrawal, did it not?	² plan was. We looked at our size within that
A Yes. Well and I have to say,	plan, and that's how we kind of came up with
remember, when we closed C & S, it was our	some numbers.
interpretation that we were taking no one.	5 Q Did a benefit consultant work on
So we expected there to be a partial because	6 that model?
we weren't taking any of the employees.	7 A No.
8 Q Okay.	8 Q No?
9 Well, first, we haven't gotten to	9 A No. Not at that point.
the point to answer my question about who	10 Q And did the model indicate how many
worked on this model?	employees The New York Times needed to
A It was me and my attorney. My	transfer over to I'm sorry.
labor attorney.	13 Let me withdraw that.
Q And who is your labor attorney?	Did the model indicate how many
And who is your labor attorney? A Bernie Plum.	employees The New York Times needed to hire
Q And Bernie Plum is from Proskauer,	from C & S in order not to have a partial
correct?	withdrawal?
18 A Yes.	18 A No, not when we initially did it.
Q And so were you running the model	We kind of did the back-of-the-envelope
or was he running the model?	20 knowing what the total pay of a New York
21 A I was running the model.	21 Times driver is, and we just multiplied
Q And what were the inputs into the	22 numbers.
23 model?	23 Q Well, multiplied what numbers?
A Like I said, we looked at what our	24 A Multiplied the number of people
25 shortfall, what the total shortfall in the	that you hire to what The New York Times
- Shortian, what the total shortian in the	that you file to what the New Tork Times
Page 228	Page 229
1 ARBITRATION	1 ARBITRATION
ARBITICITION	MOTHETION
wage rates were.	Q And so that was the decision,
 wage rates were. Q Okay. 	² Q And so that was the decision,
 wage rates were. Q Okay. A Okay. And then we looked at how 	Q And so that was the decision, was that driven by the work that The New York Times decided to take inside The Times?
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	Page 230		Page 231
1	ARBITRATION	1	ARBITRATION
2	Q Was there a requirement to transfer	2	of the first request.
3	them to The New York Times?	3	Q Okay. When were you first aware of
4			the first request?
5	asserted at some point there was some	5	A That was the January 22nd letter.
6			Q Of what year?
7			A 2009.
8	you asked the Fund for a withdrawal	8	Q And that's after an agreement was
9	liability calculation?	9	already reached concerning the closing down
10	A During which period?	10	of C & S?
11	Q During the period that you were	11	A Yes.
12	running these models, running the model or	12	Q And you learned, as I understand
13	models trying to figure out what the	13	from your direct testimony, that the Pension
14	potential partial withdrawal might be.	14	Fund did not provide the information to the
15	A I don't recall when we were in the	15	first request that you at least were
16	midst of that doing that.	16	aware of The New York Times made for
17	I do recall shortly thereafter	17	withdrawal liability.
18	doing that.	18	A That's correct.
19	Q Okay.	19	Q How long after the first request
20	Because when was the first time	20	was second request made?
21	that The New York Times asked for a	21	A To my knowledge, it was about a
22	withdrawal liability estimate from the	22	year.
23	Pension Fund?	23	Q About a year. And why did you wait
24	A I can't tell you when they first	24	a year to ask again?
25	asked. I can tell you when I became aware	25	A We were probably going through the
	Page 232		Page 233
1		1	
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION same process that we usually go through. We		ARBITRATION A No, I didn't.
2	ARBITRATION same process that we usually go through. We were reviewing our funds. And we realized	2	ARBITRATION A No, I didn't. Q Did you ever ask Neal Schelberg the
2	ARBITRATION same process that we usually go through. We were reviewing our funds. And we realized we didn't get an answer from The Times	2	ARBITRATION A No, I didn't. Q Did you ever ask Neal Schelberg the same question?
2 3 4	ARBITRATION same process that we usually go through. We were reviewing our funds. And we realized we didn't get an answer from The Times from the NMDU. I'm sorry.	2 3 4	ARBITRATION A No, I didn't. Q Did you ever ask Neal Schelberg the same question? A No, I didn't.
2 3 4 5	ARBITRATION same process that we usually go through. We were reviewing our funds. And we realized we didn't get an answer from The Times from the NMDU. I'm sorry. Q When you didn't get an answer from	2 3 4 5	ARBITRATION A No, I didn't. Q Did you ever ask Neal Schelberg the same question? A No, I didn't. Q Did you ever ask Rosana Egan or
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	Page 234		Page 235
1	ARBITRATION	1	ARBITRATION
2	Q And when you didn't get it, you	2	A Yes.
3	didn't follow up?	3	Q And if he came to you and said we
4	A No. I asked again the following	4	have a problem I'm sorry. I withdraw.
5		5	Did he ever come to you and say,
6	year. Q And then you didn't get that?	6	look, we have a problem here and we're going
7	I'm sorry, there's got to be a	7	to trigger a partial withdrawal?
8	audible response.	8	A No.
9	A You're correct. I didn't get it.	9	Q But if he came to you and said we
10	Q And when that happened the second	10	have a problem, we're going to trigger a
11	time, you didn't follow up?	11	partial withdrawal, what would you have
12	A No, I didn't.	12	done?
13	Mr. Schwartz followed up with me	13	A I could have brought more work back
14	with a question regarding information on a	14	in-house.
15	theories on withdrawal liability. That was	15	Q And that would be for the purpose
16	the answer I got from the Fund.	16	of avoiding a partial withdrawal?
17	Q Well, that answer wasn't an	17	A Yes.
18	estimate of withdrawal liability, was it?	18	MR. RICHMAN: I just want to
19	A Exactly, it was not.	19	take a few minutes.
20	Q You said Mr. Cavallaro, he's a VP	20	(A brief recess was
21	of Finance at The Times?	21	taken.)
22	A Yes.	22	MR. RICHMAN: Okay. We're
23	Q Now, he was following the situation	23	done.
24	for you to see if you were coming close to	24	MR. MILLER: Oh, okay.
25	triggering a partial withdrawal, correct?	25	We can go back on the record.
	anggering a partial withdrawai, contect:		, to can go back on the record.
	Page 236		Page 237
1	ARBITRATION	1	ARBITRATION
2	REDIRECT EXAMINATION BY MR. MILLER:	2	who is making what contribution and how
3	Q Mr. Hayes, I just have a couple of	3	they're making it. We never see those.
4	follow-up questions.	4	Q You were asked several questions
5	You were asked several questions	5	about following up with the Pension Fund in
6	about The New York Times' payroll system.	6	connection with The New York Times' request
7	How knowledgeable are you about	7	for withdrawal liability estimates and other
8	The New York Times' payroll system?	8	information.
9	A Not at all.	9	Let me ask you this question:
10	Q How knowledgeable are you about the	10	Do you have a belief whether it
11	process that the Times uses to calculate and	11	would have been appropriate for you in your
12	pay pension contributions to the NMDU	12	trustee role to use that trustee role to get
13	Pension Fund?	13	the Fund to respond to pending requests for
14	A I don't get involved in those	14	information made by The Times?
15	calculations.	15	A No. As I said, I was recused from
16	Q Now I'm going to ask you a couple	16	that. And for me, that was an extension of
17	questions about your role as a trustee.	17	that recusal is that I didn't think that was
18	As a trustee, do you see remittance	18	appropriate for me to do that.
19	reports that are filed by other contributing	19	Q And is that why you did not
20	employers?	20	followup with individuals at the Fund in
21	A No, I do not.	21	connection with The Times' request for
22	Q How involved are the trustees in	22	information?
23	the day-to-day collection of contributions	23	A Yes.
24 25	at the Fund?	24	Q And finally, Mr. Hayes, I want to
2 9	A We don't ever see any documents on	25	draw your attention to Exhibit 45 which we

	B 030
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1 ARBITRATION	¹ ARBITRATION
2 previously looked at. Those were redacted	is consistent with your understanding of the
minutes in connection with that Weiser	3 contribution form?
4 report.	A The way it's written, it is
5 A The September 24th	5 consistent with my understanding.
6 Q It's the September 24th minutes.	6 Q Okay.
And attached to that is a letter from Weiser	7 MR. MILLER: No further
⁸ dated June 14, 2010.	8 questions.
9 A Yes.	9 RECROSS EXAMINATION BY MR. RICHMAN:
Q You are there?	Q So, Mr. Hayes, you thought as part
11 A Yes.	of your recusal that you couldn't follow up
Q I want to draw your attention to	with anyone at the Fund with respect to
Page 2 of that letter, and at the top of	The New York Times' requests for a
Page 2 of the letter, there's a paragraph	withdrawal liability estimate; is that
entitled "Result."	15 correct?
And I'd like you to just read that	A I thought it would be inappropriate
paragraph to yourself for a moment.	for me to do that.
¹⁸ A Yes.	Q Okay. So you thought it would be
Q The last sentence in that paragraph	inappropriate to do that.
discusses recalculation of pension	But let's turn to Exhibit 77.
contributions.	²¹ A Yes.
²² A Yes.	Q And you did send this letter,
Q And do you have a belief as to	23 correct?
whether the statement in that last sentence	A Yes, I did.
about how to calculate pension contributions	G 25 Q Okay.
Page 240	Page 241
7110111011	THO THO IN
Did you write the letter:	for the reasons we were asking. MR. RICHMAN: I have no further
1 1 cs, 1 did, with some neip from my	
counsel.	questions.
2 This you detain y didn't come up	WIK. WILLER. NO Infine
with the sections of Lixion, and you, that's	questions.
referenced in the letter?	7 ARBITRATOR IRVINGS: Very good. 8 Thank you very much
11 110.	Thank you very much.
2 This so you thought it was	9 Off the record.
appropriate for you to send this fetter to	
the Fund in response to Mr. Schwartz's request to you but it was inappropriate for	(whereupon, the proceeds were
request to you but it was inappropriate for	adjourned at 5.16 p.m.)
you to ask for an estimate of The New York	<u> </u>
you to ask for an estimate of The New York Times' withdrawal liability?	14
you to ask for an estimate of The New York Times' withdrawal liability? A Mr. Schwartz asked me a question in	14 15
you to ask for an estimate of The New York Times' withdrawal liability? A Mr. Schwartz asked me a question in a letter in my role as a senior manager at	14 15 16
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1 ARBITRATION 2 INDEX 3 PAGE 4 Opening Statement by Mr. Miller 5 Opening Statement by Mr. Richman 6 7 WITNESS: MORRIS CLAFFEE 8 Direct Examination by Mr. Roth 9 Cross Examination by Mr. Garfield 10 Redirect Examination by Mr. Garfield 11 Recross Examination by Mr. Garfield 12 Page 14 WITNESS: TERRY L. HAYES 15 Direct Examination by Mr. Miller 16 Cross Examination by Mr. Richman 17 Redirect Examination by Mr. Richman 18 Recross Examination by Mr. Richman 19 Page 19 20 21 EXHIBITS 23 Exhibit 116 Marked in Evidence 24 Exhibit 117 Marked in Evidence	5 21 33 67 113 117	ARBITRATION CERTIFICATE STATE OF NEW YORK : ss. COUNTY OF NEW YORK I, BARBARA R. ZELTMAN, Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify: That this transcript is a true record of the proceedings had. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter. IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of February, 2015. BARBARA R. ZELTMAN Court Reporter and Notary Public
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1
                ARBITRATION - VOLUME II
2
               AMERICAN ARBITRATION ASSOCIATION
     ----X
    THE NEW YORK TIMES COMPANY,
4
                     Petitioner,
5
                      V.
6
    NEWSPAPER and MAIL DELIVERERS'-PUBLISHERS'
7
    PENSION FUND,
                     Claimant.
9
10
11
12
                           ARBITRATION
13
                        VOLUME II - DAY 2
14
                      New York, New York
15
                 Wednesday, February 11, 2015
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    REPORTED BY: BARBARA R. ZELTMAN
                 Professional Stenographic Reporter
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    Job Number: 90058
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February 11, 2015 February 11, 2015 February 11, 2015 February 11, 2015 Arbitration proceedings held at American Arbitration Association, 120 Broadway, New York, New York, before BARBARA R. ZELTMAN, a Professional Stenographic Reporter and Notary Public within and for the State of New York.	ARBITRATION - VOLUME II ARBITRATOR IRVINGS: Let's get started. DARREN FRENCH, having been first duly sworn by Arbitrator Irvings, was examined and testified as follows: DIRECT EXAMINATION BY MR. MILLER: Q Mr. French, can you state for the record your full name and the town and state in which you reside. A My name is Darren French. I reside in Edgewater, New Jersey. Q Good morning, Mr. French. A Good morning. C What is your profession, sir? A I'm an actuarial consultant to multiemployer pension funds and to certain contributing employers to the same. Q Are you familiar with the term "enrolled actuary"? A Yes, I am. Q And what is your understanding of the term "enrolled actuary"? A It's a person who is authorized to
ARBITRATION - VOLUME II APPEARANCES: ARBITRATOR: MARK L. IRVINGS, ESQ. 24 Elba Street Brookline, Massachusetts 02446 JONES DAY Attorneys for Petitioner 51 Louisiana Avenue NW Washington, D.C. 20001 BY: Evan Miller Miguel Eaton Yaakov Roth SCHULTE ROTH & ZABEL Attorneys for the Claimant 19 919 Third Avenue New York, New York 10022 BY: Ronald Richman Max Garfield Adam Gartner	ARBITRATION - VOLUME II sign certain government filings, certain schedules, the Form 5500, for example. Q And are you an enrolled actuary? A Yes, I am. Q And how does one become an enrolled actuary? A There are several exams one needs to take. There are some experience requirements, working in funds or other experience as actuaries, and application. Q And I take it you took and passed the exams to become an enrolled actuary? A Yes, I did. C Can you please summarize for us your general qualifications as an actuary? A I spent about 30 years as an actuarial consultant with Buck Consultants working on all kinds of pension plans but in particular multiemployer plans for the last 20 years or so. Q And when did you leave the employment of Buck? A Around the end of 2013. Q And under what circumstances did

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¹ ARBITRATION - VOLUME II	¹ ARBITRATION - VOLUME II
you leave Buck?	2 Q Do you have experience with
³ A I retired.	3 multiemployer pension funds?
4 Q And do you continue to engage in	4 A Yes, I do.
5 actuarial consulting for either pension	5 Q And can you briefly summarize for
⁶ funds or employers?	6 the record that experience.
A I continue to do some actuarial	A Yeah. Over the last 20-something
8 consulting, some special assignments for	8 years, I have probably worked on maybe 15 or
both funds and employers.	so plans that I was the enrolled actuary.
Q And by "funds," do you mean	Maybe 10 to 15 plans I was working on.
multiemployer funds?	I had done and reviewed withdrawal
A Yes, I do. Excuse me.	liability calculations probably in the
Q Are you a member of any	hundreds as well as done audits or reviews
professional societies?	for employers on at least a hundred other
A Yes. I am an associate of the	calculations done by other actuaries at, I'm
Society of Actuaries and I'm a member of the	going to say, maybe 50 funds.
American Academy of Actuaries.	Q During the course of your work at
18 Q And how does one go about joining	Buck, did you have any leadership role at
these actuarial societies?	Buck Consultants?
A Well, the Society of Actuaries is a	A Yes. From around 2008 till when I
series of exams as well as application and	retired, I basically led Buck's
22 application fee, and the Academy of	22 multiemployer practice.
Actuaries is really a related type of	Q Can you please summarize for the
qualifications and, again, application and	record what that leadership role entailed?
²⁵ fee.	25 A It entailed marketing, it entailed
100.	The interior marketing, it entained
Page 250	Page 252
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1 ARBITRATION - VOLUME II	¹ ARBITRATION - VOLUME II
1 ARBITRATION - VOLUME II 2 Q Thank you.	ARBITRATION - VOLUME II helping set standards for the firm, helped
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Page 253 ARBITRATION - VOLUME II ARBITRATION - VOLUME ARBITRATION - VOLUME third. MR. MILLER: Okay. BY MR. MILLER: ARBITRATION - VOLUME third. Q And can you please summand the Arbitrator the size of the Central	Page 255
2 ARBITRATION VOLUME ARBITRATION VOLUME 2 third. 3 MR. MILLER: Okay. 3 Q And can you please summan	
3 MR. MILLER: Okay. 3 Q And can you please summar	11
The can you please summar	riza for
br wik. wildlick.	
5 Q What, if any, attestations does an 5 States Teamsters Pension Fund vis	
6 enrolled actuary have to make in connection 6 other multiemployers.	-a-v15
7 with the actuarial assumptions that such 7 A The Central States Teamster	ra
8 actuary determines for a multiemployer fund? 8 Pension Fund I believe certainly	
9 A Well, I could think of at least two 9 of the biggest funds in the country.	
of the diggest rands in the country.	
unings. One is there's a certification understanding is it's the largest in t	erms
requirement on the senedule MB. Senedule of numbers of participants.	tla on
With, for example, to the Form 5500 where sten	
an attestation is needed.	ı nave
variation reports and any communications A TVC worked on the Western	Eund
that involve variations need to have such	
- Certification. Diacksimus-Bonermakers i ension	
Q in connection with your work at Q can you picase summarize	ioi iiie
, , , , , , , , , , , , , , , , , , , ,	2
work of your multiemployer rand emoned Conference of Teamsters pensions	
actuary confedence of	
A 165, 1 did.	
And can you offerly summarize that the multiciniployer pension runds in the	
work.	1
25 A Yes. You know, memos and reports 25 assets.	
Page 254	Page 256
¹ ARBITRATION - VOLUME II ¹ ARBITRATION - VOLUME I	I
other actuaries did, either peers or other 2 Q Have you previously testified	d in
³ actuaries with less experience, just to ³ any litigation as an expert witness of	on
4 review and make sure, you know, the basic 4 actuarial issues?	
⁵ rules are met and that there's nothing else ⁵ A Yes, I have.	
6 that I could suggest that would be helpful. 6 Q And what is the most recent	case in
	ritness?
7 Q And although you may have 7 which you've served as an expert w	
7 Q And although you may have 7 which you've served as an expert w 8 previously touched upon this, do you have 9 experience with respect to withdrawal 7 which you've served as an expert w 8 A It was I believe it was the FELRA Pension Plan versus the Gr	
 Q And although you may have previously touched upon this, do you have Which you've served as an expert was the A It was I believe it was the 	
7 Q And although you may have 8 previously touched upon this, do you have 9 experience with respect to withdrawal 10 liability under ERISA? 10 A Yes, I do. 7 which you've served as an expert w 8 A It was I believe it was the 9 FELRA Pension Plan versus the Gr Atlantic & Pacific Tea Company. I in the Southern District Court in W	It was done
7 Q And although you may have 8 previously touched upon this, do you have 9 experience with respect to withdrawal 10 liability under ERISA? 11 A Yes, I do. 12 Q And can you please summarize that 17 which you've served as an expert w 8 A It was I believe it was the 9 FELRA Pension Plan versus the Gr 10 Atlantic & Pacific Tea Company. I 11 in the Southern District Court in W 12 Plains, New York.	It was done
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7	It was done hite
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Q And although you may have previously touched upon this, do you have previously the pideive it was the previously the served as an expert w A It was I believe it was the previously the served as an expert w A It was I believe it was the A It was I believe it was the previously the served as an expert w A A It was I believe it was the A It was I believe it was the previously the same of the Southern District Court in W plants, New York. 13 Q And what year was that, sir? A 2013. 15 Q And did you testify as an expert w A Yes, I did. Previously the p	It was done hite
Q And although you may have previously touched upon this, do you have served as an expert was the previously touched upon this, do you have previously touched upon this, do you have previous the Gr A Yes, I do Atlantic & Pacific Tea Company. In the Southern District Court in We plains, New York. Q And what year was that, sir? Q And did you testify as an expect was the Gr A Yes, I did. Q And were you qualified as an by the judge in that case? A Yes.	It was done hite pert
7 Q And although you may have 8 previously touched upon this, do you have 9 experience with respect to withdrawal 10 liability under ERISA? 11 A Yes, I do. 12 Q And can you please summarize that 13 experience. 14 A Yes. I've done, again, probably 15 hundreds or at least supervised hundreds of 16 calculations of withdrawal liability, and 17 probably at least a hundred that I have 18 reviewed that other actuaries have done on, 19 again, I would say 50 funds. 20 Q What are some of the multiemployer 21 funds for which you have served as an expert w 8 A It was I believe it was the 8 A It was I believe it was the 9 FELRA Pension Plan versus the Gr 10 Atlantic & Pacific Tea Company. I 11 in the Southern District Court in W 12 Plains, New York. 13 Q And what year was that, sir? 14 A 2013. 15 Q And did you testify as an expert w 16 during the trial in that case? 17 A Yes, I did. 18 Q And were you qualified as an object to by the judge in that case? 20 A Yes. 21 Q Have you previously testified	It was done hite pert n expert
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1	ARBITRATION - VOLUME II	1	ARBITRATION - VOLUME II
2	number of arbitrations in which you've	2	letters between the Fund and Fund counsel.
3	testified as an expert?	3	There was four or five valuation
4	A Three or four. Something like	4	reports, 2007 or '8 through 2013 or so. And
5	that.	5	similar dates for the Fund audited financial
6	Q And in those arbitrations, were you	6	statements.
7	qualified by the arbitrator as an expert on	7	And I also reviewed the appropriate
8	actuarial issues?	8	sections of the law and the actuarial
9	A Yes.	9	standards.
10	Q Has any adjudicator ever rejected	10	Q Thank you.
11	you as an expert either in litigation or	11	In general, what do you understand
12	arbitration in connection with actuarial	12	to be the purpose of withdrawal liability?
13	issues?	13	A Conceptually, withdrawal liability
14	A No, not to my knowledge.	14	as I understand it is that when an employer
15	MR. MILLER: Mr. Arbitrator, at	15	withdraws from a multiemployer plan that
16	this juncture, I'd like to move to	16	they basically pay their fair share of the
17	qualify Mr. French as an expert on	17	unfunded vested benefit obligations.
18	actuarial issues.	18	Q And can you explain what you mean
19	MR. RICHMAN: I didn't know	19	by "unfunded vested benefit obligations"?
20	this was an issue.	20	A Yes.
21	MR. MILLER: Okay. Good?	21	The fund has certain legal
22	Thank you.	22	obligations that have been accrued and
23	ARBITRATOR IRVINGS: Go right	23	invested under the plan and there's a pool
24	ahead.	24	of assets. And to the extent that those
25	BY MR. MILLER:	25	obligations or liabilities exceed the
	Page 258		Page 260
1		1	
1 2	ARBITRATION - VOLUME II	1 2	ARBITRATION - VOLUME II
	ARBITRATION - VOLUME II Q Have you been retained by The New		ARBITRATION - VOLUME II assets, that's an unfunded benefit vest
2	ARBITRATION - VOLUME II	2	ARBITRATION - VOLUME II assets, that's an unfunded benefit vestvested benefit obligation.
2	ARBITRATION - VOLUME II Q Have you been retained by The New York Times as an expert actuary in this case?	2 3	ARBITRATION - VOLUME II assets, that's an unfunded benefit vestvested benefit obligation. Q Without getting into too much
2 3 4	ARBITRATION - VOLUME II Q Have you been retained by The New York Times as an expert actuary in this case? A Yes, I have.	2 3 4	ARBITRATION - VOLUME II assets, that's an unfunded benefit vest vested benefit obligation. Q Without getting into too much technical detail, how does an actuary go
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2 3 4 5 6	ARBITRATION - VOLUME II Q Have you been retained by The New York Times as an expert actuary in this case? A Yes, I have.	2 3 4 5 6	ARBITRATION - VOLUME II assets, that's an unfunded benefit vestvested benefit obligation. Q Without getting into too much technical detail, how does an actuary go about measuring those unfunded vested
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1	ARBITRATION - VOLUME II	1	ARBITRATION - VOLUME II
2	there's interest and investment earnings on	2	fund earnings to achieve and the discount
3	that money.	3	rate?
4	Q So what then is the relationship	4	A Yes. They are essentially the same
5	between a discount rate and the interest	5	thing in most cases.
6	earned or interest rate on assets?	6	Q If an actuary selects a discount
7	A My view, they're basically the same	7	rate for valuing liabilities that is lower
8	thing, almost to say two sides of the same	8	than the anticipated investment return, what
9	coin.	9	is the effect of that?
10	The interest rate is kind of the	10	A If the actuary chooses a discount
11	way you take a dollar today and bring it	11	rate that is lower than the investment
12	forward into the future, what it's going to	12	return, that would necessarily mean that the
13	be worth in five or ten years.	13	liability be increased above what it would
14	The discount rate, on the other	14	otherwise have been, higher than it arguably
15	hand, you look at a dollar out in ten years	15	should be.
16	and bring that back or discount that back to	16	Q In your opinion, what should the
17	today.	17	relationship be between the investment
18	Q For withdrawal liability purposes,	18	return assumption used to estimate expected
19	what is your understanding of how ERISA law	19	experience on assets and the discount rate
20	directs actuaries to select a discount rate	20	to present value of the plan's future
21 22	to value unfunded vested benefits?	21 22	benefit obligations?
23	A Well, the law says, my	23	A Again, I think they are essentially
24	understanding, is that it is the rate that	23	the same number.
25	reflects the best estimate of the actuary's	25	Q That opinion that you just
23	anticipated experience under the plan.	25	expressed, that they are essentially the
	Page 262		Page 264
1	Page 262 ARBITRATION - VOLUME II	1	Page 264 ARBITRATION - VOLUME II
1 2		1 2	-
	ARBITRATION - VOLUME II		ARBITRATION - VOLUME II
2	ARBITRATION - VOLUME II Q And what is your understanding of	2	ARBITRATION - VOLUME II same number, is that consistent with basic
2	ARBITRATION - VOLUME II Q And what is your understanding of what the actuary's best estimate of	2 3	ARBITRATION - VOLUME II same number, is that consistent with basic actuarial principle? A Yes, it is. Q Are there, in fact, any actuarial
2 3 4	ARBITRATION - VOLUME II Q And what is your understanding of what the actuary's best estimate of anticipated experience under the plan means? A Right. The experience under the plan that's being referred to there is the	2 3 4	ARBITRATION - VOLUME II same number, is that consistent with basic actuarial principle? A Yes, it is. Q Are there, in fact, any actuarial principles that guide actuaries in how to
2 3 4 5	ARBITRATION - VOLUME II Q And what is your understanding of what the actuary's best estimate of anticipated experience under the plan means? A Right. The experience under the plan that's being referred to there is the interest, the interest or investment return	2 3 4 5	ARBITRATION - VOLUME II same number, is that consistent with basic actuarial principle? A Yes, it is. Q Are there, in fact, any actuarial
2 3 4 5 6 7 8	ARBITRATION - VOLUME II Q And what is your understanding of what the actuary's best estimate of anticipated experience under the plan means? A Right. The experience under the plan that's being referred to there is the interest, the interest or investment return that you expect the fund earnings to achieve	2 3 4 5 6 7 8	ARBITRATION - VOLUME II same number, is that consistent with basic actuarial principle? A Yes, it is. Q Are there, in fact, any actuarial principles that guide actuaries in how to select a discount rate for purposes of discounting future liabilities to present
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	Page 265		Page 267
1	ARBITRATION - VOLUME II	1	ARBITRATION - VOLUME II
2	Q Mr. French, can you turn your	2	paragraphs of Section 3.6 set forth a
3	attention to Exhibit 10. It's in the white	3	general proposition by which actuaries
4	binder.	4	should go about selecting investment return
5	MR. MILLER: We have colors	5	assumptions and discount rates?
6	today.	6	A Yes, it does.
7	BY MR. MILLER:	7	Q And what is that opinion?
8	Q Mr. French, is this the ASOP that	8	A Very generally, a general rule is
9	you just referred to?	9	the appropriate discount rate is the same as
10	A Yes, it is.	10	the investment return assumption.
11	Q And what is it titled?	11	Q Do those paragraphs that you
12	A It's Selection of Economic	12	reviewed in Section 3.6 also state any
13	Assumptions for Measuring Pension	13	exceptions to that general proposition?
14	Obligations.	14	MR. RICHMAN: Objection. It
15	Q And what is the date for this	15	says what it says.
16		16	
17	ASOP 27, the one that you are looking at, Exhibit 10?	17	MR. MILLER: It says what it
18		18	Says.
19	A Adopted September 2007, updated	19	ARBITRATOR IRVINGS: Yeah, it
20	effective May 1, 2011.	20	does.
	Q And do you know if this version of		BY MR. MILLER:
21	ASOP 27 has itself been updated since then?	21	Q What is your understanding well,
22	A Yes, it has.	22	do you have an understanding whether these
23	Q And when was that update?	23	three paragraphs also state some exceptions?
24	A I believe in 2013.	24	A Yes, they do.
25	Q And do you have an understanding of	25	Q And can you please summarize your
	Page 266		Page 268
	Page 266		Page 268
1	ARBITRATION - VOLUME II	1	ARBITRATION - VOLUME II
2	ARBITRATION - VOLUME II when that updated ASOP 27 is effective?	2	ARBITRATION - VOLUME II understanding of those exceptions?
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2 3 4	ARBITRATION - VOLUME II when that updated ASOP 27 is effective? A I believe it is in 2014. Q So would the version of ASOP 27	2 3 4	ARBITRATION - VOLUME II understanding of those exceptions? A The exceptions stated here and when reading the whole ASOP together which
2 3 4 5	ARBITRATION - VOLUME II when that updated ASOP 27 is effective? A I believe it is in 2014. Q So would the version of ASOP 27 that is Exhibit 10, would that have been the	2	ARBITRATION - VOLUME II understanding of those exceptions? A The exceptions stated here and
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2 3 4 5	ARBITRATION - VOLUME II when that updated ASOP 27 is effective? A I believe it is in 2014. Q So would the version of ASOP 27 that is Exhibit 10, would that have been the	2 3 4 5	ARBITRATION - VOLUME II understanding of those exceptions? A The exceptions stated here and when reading the whole ASOP together which you kind of need to do to understand it
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Page 269 Page 271 1 1 ARBITRATION - VOLUME II ARBITRATION - VOLUME II 2 2 Page 5 and then goes on to Page 6 and doesn't have to have a dedicated pool of 3 3 assets. Page 7. 4 4 In the absence of either of those Can you take a quick moment to 5 5 review 3.6.2, and why don't you explain your two situations that you described, do you 6 6 have an opinion on whether it would be understanding of that section. 7 7 appropriate to use a discount rate other 3.6.2 shows two examples of 8 8 than the investment return assumption to acceptable methods of determining an 9 9 present value liabilities? investment return assumption. 10 10 Would there ever be? What are those two methods? 11 11 One of them is called a building Let me say it again. 12 12 In the absence of either of the two block approach, and the second one is called 13 13 exceptions described in 3.6, do you have an the cash flow matching method. 14 14 opinion on whether it would be appropriate And can you briefly summarize what 15 15 to use a discount rate other than the the building block approach is? 16 16 The building block approach investment return assumption to present 17 17 basically looks at a core inflation number value liability? 18 18 first and then builds upon that based on the Well, let me answer it this way. 19 19 type of assets that might be in the plan or If one's looking for a best estimate of 20 anticipated experience under a pension plan, 20 that you are trying to determine an 21 21 investment return on. then the answer would be no, I can't think 22 22 So if there's equities, you might of one. 23 23 And in your opinion when an actuary figure out what kind of investment premium 24 24 for a multiemployer plan selects an there would be over inflation and then build 25 25 investment return assumption, are they that onto the inflation rate. And the same Page 270 Page 272 1 1 ARBITRATION - VOLUME II ARBITRATION - VOLUME II 2 2 required to do so by virtue of providing sort of thing could apply for real estate or 3 3 actually for debt, for that matter, for bond their best estimate of that anticipated 4 4 experience? holdings. 5 5 Yes. Q In connection with multiemployer Α 6 6 plans, in what circumstances would it be In your opinion, what is the 0 7 7 relationship, if any, between the exceptions appropriate to use the building block method 8 8 to the general rule set forth in Section 3.6 to develop an investment return assumption? 9 9 and the context of withdrawal liability? A In most situations. I mean, most 10 10 plans have equities, they have real estate, The exceptions that are set forth 11 11 they have bonds. This is a very flexible in 3.6, the second exception, which is the 12 12 plan that has unfunded or no assets, clearly method to be used for almost any fund. 13 13 doesn't apply to withdrawal liability. But in particular, would it be 14 14 And there is to my knowledge no appropriate to use the building block method 15 15 rule or governing rule or accounting rule to develop the investment return assumption 16 16 requiring an actuary to use a rate other in connection with multiemployer plans that 17 17 than the investment return assumption for have a diversified pool of assets? 18 18 calculating withdrawal liability. A Yes, absolutely. 19 19 And, in fact, the natural reading What is the cash flow matching Q 20 20 of the law is this is the best estimate of method? 21 21 anticipated experience under the plan. I'm The cash flow matching method 22 22 basically looks at all the series of not sure what else that could be besides the 23 23 investment return assumption. payments that the Fund is going to be able 24 24 Q Can I turn your attention to 3.6.2 to make and tries to match that against the 25 25 of the ASOP. It begins at the bottom of duration of certain bond investments.

Page 275 Page 273 1 1 ARBITRATION - VOLUME II ARBITRATION - VOLUME II 2 2 that's fairly heavy in equities, real And it's a method that makes sense 3 3 estate, commodities or other when you need to cash flow match for 4 whatever reason, either because of a 4 alternative-type investments and not 5 5 terribly heavy on the fixed income side. government standard or because you are 6 6 trying to immunize a portfolio that has such MR. MILLER: Mr. Arbitrator, I 7 7 investments in it. now would like to introduce into 8 8 And indeed, what type of portfolio evidence one of the objected 9 9 of assets would make the cash flow matching exhibits. 10 10 It's Objected Exhibit 4. method appropriate to be used by a 11 multiemployer pension plan in developing its 11 And Mr. Arbitrator, this exhibit 12 12 investment return assumption? has been objected to by the Fund on 13 13 relevance grounds, so I thought if I A Well, a plan, that has, for 14 14 example, all government bonds or maybe might to try and lay a foundation for 15 corporate bonds in particular, particularly 15 relevance. 16 16 less callable-type duration bonds. ARBITRATOR IRVINGS: Go ahead. 17 17 And what about for a plan that has MR. MILLER: Thank you. 18 18 a diversified pool of assets including BY MR. MILLER: 19 19 assets in equity? Q Mr. French, do you recognize this 20 I don't think this method would 20 document? 21 21 make sense because there's no way under this Yes, I do. Α 22 22 method to, for example, try to figure out 0 And what is this? 23 23 This is the ASOP Number 27 adopted the return on the equity portion. Α 24 Based on your review of the 24 by the Actuarial Standards Board September 25 financial statements for the NMDU Pension 25 of 2013. Page 274 Page 276 1 ARBITRATION - VOLUME II 1 ARBITRATION - VOLUME II 2 2 Fund and the Form 5500s for the Pension O And is this document the revised 3 3 Fund, do you have an opinion on whether the version of ASOP 27 that you referred to in 4 4 Pension Fund here used either the building your testimony moments ago? 5 5 block or cash flow matching method to come A Yes, it is. 6 6 up with its investment return assumption? Do you know whether this version of 7 7 Well, I don't think it could have ASOP 27 makes any changes to Section 3.6? 8 8 used the cash flow matching method, but it A Yes, my recollection is --9 9 could certainly have used the building block MR. RICHMAN: I'm going to 10 10 method. object now and we have a enough of a 11 11 Q And why is that? foundation 12 12 Because of the return assumption What we know is that this does not 13 13 that they've had, basically a consistent govern the calculation that was done. 14 14 7.5 percent return, would be the type of The "this" being the Objected Exhibit 4. 15 return I would expect under a building block 15 And so I'm not really sure why 16 16 approach. I don't believe you would get to we're spending time going through this. 17 17 that type of return under a government In fact --18 18 ARBITRATOR IRVINGS: Let's find bond portfolio in this day and age. 19 Just to elaborate on that some 19 Q out. 20 20 MR. MILLER: Let's find out. more. 21 21 What is the nature of the portfolio May I continue to lay the 22 of assets that would be needed to have an 22 foundation? 23 investment return assumption in these times 23 MR. RICHMAN: No, you can't. 24 24 of approximately 7.5 percent? ARBITRATOR IRVINGS: Just 25 25 A A fairly well-diversified portfolio explain why we are doing this.

	Page 277		Page 279
1	-	1	ARBITRATION - VOLUME II
2	ARBITRATION - VOLUME II	2	
	MR. MILLER: The updated ASOP	3	was in effect says on the subject of best
3	clarifies the statements made in the	4	estimate is important. And you as the
4	ASOP version that was used for		arbitrator will give it the weight that
5	purposes of coming up with an	5	you deem it deserves.
6	investment return assumption in this	6	ARBITRATOR IRVINGS: Well, how
7	matter as it relates to the question	7	would a clarification let's assume
8	of best estimate. And it clarifies	8	sort of a summary judgment standard
9	and provides additional meaning to	9	here
10	the term "best estimate."	10	MR. MILLER: Okay.
11	And the concept of best estimate is	11	ARBITRATOR IRVINGS: How would
12	important and we believe crucial as it	12	a clarification that was not
13	relates to the legitimacy of the	13	available at the time the
14	investment return assumption and discount	14	calculations were made in any way
15	rate that was employed to calculate the	15	govern, since they didn't have the
16	present value of liabilities for this	16	benefit that clarification at the
17	withdrawal liability assessment.	17	time they made
18	MR. RICHMAN: It revises. It	18	MR. MILLER: Sure. It doesn't
19	doesn't clarify.	19	govern, but the clarification will
20	MR. MILLER: And I'd like	20	guide the legitimacy of the
21	MR. RICHMAN: Excuse me.	21	interpretation of the old version of
22	MR. MILLER: I would like the	22	ASOP 27 at the time it was made.
23	expert to give his opinion on that	23	So to the extent that a
24	subject.	24	determination and interpretation of the
25	MR. RICHMAN: We are going to	25	operative version of ASOP 27 was made on
	With Rechivitive we are going to		operative version of 11801 27 was made on
	Page 278		Page 280
1	Page 278 ARBITRATION - VOLUME II	1	Page 280 ARBITRATION - VOLUME II
1 2		1 2	
	ARBITRATION - VOLUME II		ARBITRATION - VOLUME II
2	ARBITRATION - VOLUME II have both experts to talk about it and we'll have a little issue with	2	ARBITRATION - VOLUME II the subject of best estimate, the new version, to the extent it clarifies,
2	ARBITRATION - VOLUME II have both experts to talk about it and we'll have a little issue with respect to the document.	2 3	ARBITRATION - VOLUME II the subject of best estimate, the new version, to the extent it clarifies, demonstrates whether the interpretation
2 3 4	ARBITRATION - VOLUME II have both experts to talk about it and we'll have a little issue with respect to the document. It revises. It doesn't clarify.	2 3 4	ARBITRATION - VOLUME II the subject of best estimate, the new version, to the extent it clarifies, demonstrates whether the interpretation that was given to the old version at the
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2 3 4 5 6 7	ARBITRATION - VOLUME II have both experts to talk about it and we'll have a little issue with respect to the document. It revises. It doesn't clarify. And even if it's really just to clarify, it doesn't matter. It wasn't in force at the time this calculation was	2 3 4 5 6 7	ARBITRATION - VOLUME II the subject of best estimate, the new version, to the extent it clarifies, demonstrates whether the interpretation that was given to the old version at the time was correct. MR. RICHMAN: First of all, that doesn't shed any light on how
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		1	
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1	ARBITRATION - VOLUME II	1	ARBITRATION - VOLUME II
2	indicated here, this updated version	2	return assumption is for this pension?
3	was passed in September 2013, and it	3	A The actuary was using for regular
4	was indeed in September of 2013 that	4	funding purposes 7.5 percent.
5	the calculation and the assessment	5	Q And how do you know that it was and
6	here was made.	6	is 7.5 percent?
7	MR. RICHMAN: Well, the	7	A From the Schedule B to the
8	assessment, I don't know exactly when	8	Form 5500 as well as the annual valuation
9	the actual calculation was made, but	9	reports produced by the Fund actuary.
10	the assessment goes back to a period	10	Q Let's take a look at one of those
11	of time. The actual date of the	11	actuarial reports.
12	calculation, the date for which the	12	Let's look at Exhibit 24.
13	calculation is done was years before	13	Is Exhibit 24 one of the annual
14	that.	14	actuarial reports that you reviewed?
15		15	A Yes, it is.
16	And it doesn't make any sense to have this out here.	16	· · · · · · · · · · · · · · · · · · ·
17		17	Q Can you turn your attention to the
18	The calculation was apparently prepared, I'm being told by wire here, in	18	page that's marked on the bottom left SEGAL-000551.
19		19	A I found it.
20	August of 2013.	20	
21	This is not even effective	21	`
22	according to their own actuary until	22	And can you read the third line,
23	2014.	23	the third heading. Third under "Age of
24	MR. MILLER: The document	24	Spouse." A "Net investment return,
25	discusses the various draft versions,	25	A "Net investment return, 7.5 percent."
	and what became the updated ASOP 27		7.5 percent.
	Page 282		Page 284
1		1	
1 2	ARBITRATION - VOLUME II	1 2	ARBITRATION - VOLUME II
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2 3 4 5 6	ARBITRATION - VOLUME II was first discussed and aired by the actuarial community in as early as January of 2011. MR. RICHMAN: And the calculation was as of 2009. ARBITRATOR IRVINGS: I think	2 3 4 5 6	ARBITRATION - VOLUME II Q Yes. And what do you understand that to mean? A The net investment return is essentially the actuary's best estimate of the return assumption of the asset pool under this plan. You know, basically an
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Page 285	Page 287
¹ ARBITRATION - VOLUME II	1 ARBITRATION - VOLUME II
2 Q And was this 7.5 percent investment	2 A Well, that it's a fairly typical
³ return assumption consistent throughout the	mix for a plan of this size and type, that
4 actuarial valuations that you reviewed for	it's fairly heavily invested in equities.
5 this Fund?	5 Also has some real estate and has some a
6 A Yes, it was.	6 bond portfolio as well, along the lines of
Q In your experience strike that.	what we pretty typically see for a
8 Do you have an opinion about	8 multiemployer plan.
9 whether the 7.5 percent investment return	9 Q And you'll notice that this page is
assumption is typical or unusual for a	Page 10 of a document. And if you go back
multiemployer plan of this size?	to FUND-0001631 in this exhibit, that is a
12 A I do.	12 letter.
Q And what is that opinion?	13 And what is your understanding of
A It is quite typical, quite frankly,	that letter, and what is your understanding
for a plan of this size invested the way I	of what document you've been looking at that
believe this plan is invested.	is part of the Form 5500?
Q And in connection with this	A This is the independent auditors'
engagement, did you have occasion to review	report. It's been signed by the auditor or
the asset mix for this Pension Fund?	the firm of auditors basically saying that
20 A Yes, I did.	they've audited statements and what they did
Q And where did you find that	and that they looked at it in terms of
information?	general auditing standards of the United
A In the annual accounting reports or	23 States.
audit statements, financial statements.	Q And did you also in connection with
Q Can you turn your attention to	your engagement review other audited
	l l
Page 286	Page 288
Page 286 ARBITRATION - VOLUME II	Page 288 1 ARBITRATION - VOLUME II
¹ ARBITRATION - VOLUME II	¹ ARBITRATION - VOLUME II
ARBITRATION - VOLUME II Exhibit 75, which should be in the	1 ARBITRATION - VOLUME II 2 financial statements for this Fund for other
ARBITRATION - VOLUME II Exhibit 75, which should be in the light-blue binder.	1 ARBITRATION - VOLUME II 2 financial statements for this Fund for other 3 years?
ARBITRATION - VOLUME II Exhibit 75, which should be in the light-blue binder. And, Mr. French, can you turn your attention toward the back end of the document, and it's the page entitled	1 ARBITRATION - VOLUME II 2 financial statements for this Fund for other 3 years? 4 A Yes, I did. 5 Q And for approximately what years? 6 A I think it was from 2008 through
ARBITRATION - VOLUME II Exhibit 75, which should be in the light-blue binder. And, Mr. French, can you turn your attention toward the back end of the document, and it's the page entitled FUND-0001640.	ARBITRATION - VOLUME II financial statements for this Fund for other years? A Yes, I did. Q And for approximately what years? A I think it was from 2008 through 2013.
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	Page 289		Page 291
1	ARBITRATION - VOLUME II	1	ARBITRATION - VOLUME II
2	that period of time. They ended up pretty	2	obligations when calculating their ordinary
3	much where they were at the beginning.	3	funding needs?
4	Q And based on your review of this	4	A Yes.
5	Fund's assets statements and your	5	Q And in doing so, what do they use
6	understanding of the general asset	6	as the discount rate when calculating their
7	allocations for this Fund in particular, do	7	ordinary funding needs?
8	you have an opinion about whether a	8	A They ordinarily use the investment
9	7.5 percent investment return assumption is	9	return assumption.
10	reasonable?	10	Q And in your opinion, does it make
11	A Yes, I do.	11	sense to use the investment return
12	Q And what is that opinion?	12	assumption as the discount rate to present
13	A 7.5 percent strikes me as very	13	value benefit obligations in connection with
14	reasonable and consistent and not unusual.	14	funding?
15	Q And indeed why is that? Why is	15	A Yes, absolutely.
16	your opinion that this is reasonable and	16	Q And why is that, sir?
17	consistent?	17	A Because if the fund uses if the
18	A Because based on the asset	18	fund is vested fairly heavily in equities
19	allocations that I inferred from the	19	and there is an anticipation that the fund
20	statements, that type of return is what I	20	will earn a high investment return, then a
21 22	would expect over time. And the Fund	21 22	lower amount of assets, a lower amount of
23	actuary has also certified that that is what	23	contributions is needed in the fund.
23	she believes to be a best estimate return.	23	If, on the other hand, there is an
25	Q Now I'm going to ask a series of	25	expectation of a lower investment return,
23	questions about actuarial assumptions and	23	then that would necessarily require a larger
	Page 290		Page 292
1	Page 290 ARBITRATION - VOLUME II	1	Page 292 ARBITRATION - VOLUME II
1 2		2	ARBITRATION - VOLUME II amount of money, large amount of
	ARBITRATION - VOLUME II actuarial assumptions in connection with funding.	2	ARBITRATION - VOLUME II amount of money, large amount of contributions in order to make the benefit
2 3 4	ARBITRATION - VOLUME II actuarial assumptions in connection with funding. Aside from putting aside a	2 3 4	ARBITRATION - VOLUME II amount of money, large amount of contributions in order to make the benefit payments. That's the whole point of the
2 3 4 5	ARBITRATION - VOLUME II actuarial assumptions in connection with funding. Aside from putting aside a withdrawal liability situation, under what	2 3 4 5	ARBITRATION - VOLUME II amount of money, large amount of contributions in order to make the benefit payments. That's the whole point of the minimum funding requirements.
2 3 4 5	ARBITRATION - VOLUME II actuarial assumptions in connection with funding. Aside from putting aside a withdrawal liability situation, under what circumstances, if any, would a multiemployer	2 3 4 5 6	ARBITRATION - VOLUME II amount of money, large amount of contributions in order to make the benefit payments. That's the whole point of the minimum funding requirements. Q Mr. French, in your experience
2 3 4 5 6 7	ARBITRATION - VOLUME II actuarial assumptions in connection with funding. Aside from putting aside a withdrawal liability situation, under what circumstances, if any, would a multiemployer pension plan have a need to discount to	2 3 4 5 6 7	ARBITRATION - VOLUME II amount of money, large amount of contributions in order to make the benefit payments. That's the whole point of the minimum funding requirements. Q Mr. French, in your experience strike that.
2 3 4 5 6 7 8	ARBITRATION - VOLUME II actuarial assumptions in connection with funding. Aside from putting aside a withdrawal liability situation, under what circumstances, if any, would a multiemployer pension plan have a need to discount to present value its future benefit	2 3 4 5 6 7 8	ARBITRATION - VOLUME II amount of money, large amount of contributions in order to make the benefit payments. That's the whole point of the minimum funding requirements. Q Mr. French, in your experience strike that. Do you have an opinion about
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Page 293 Page 295 1 1 ARBITRATION - VOLUME II ARBITRATION - VOLUME II 2 2 decline in 2008, multiemployer fund trustees interest rate environment. 3 3 And, you know, there's ways to generally prefer a higher or lower discount 4 4 rate when they're calculating withdrawal apply pressure on professionals to try to 5 5 liability? get to a lower rate than a higher rate. A 6 6 Yeah. Q Do you know what rate the Pension 7 7 Fund here used to discount its liabilities O And what is this opinion? 8 8 For withdrawal liability purposes. for ordinary funding purposes? 9 9 there's more of a tendency to prefer a lower For ordinary funding purposes, yes. 10 10 discount rate. That was 7.5 percent. 11 11 And did the Pension Fund here also 0 And why is that? 12 Because the, again, lower discount 12 use that same rate to discount its 13 13 rate, as we mentioned earlier, provides a liabilities when calculating The Times' 14 14 higher liability, and a higher unfunded withdrawal liability? 15 15 Yes, they did. A different rate. liability means higher withdrawal liability Α 16 16 Yes, they used a different rate. payments. 17 17 So they did not use 7.5 percent as Now, that does two things that are 18 18 the discount rate to value liabilities when generally to be considered favorable to most 19 19 calculating withdrawal liability? trustees. 20 20 One is it makes it a much bigger Α That's correct. 21 21 incentive for the employer to stay in the While we'll get into specifics Q 22 22 plan, or, rather, a bigger disincentive to shortly, how did that change in the discount 23 23 leave the plan. rate affect the withdrawal liability 24 24 And at least if the employer leaves assessment against The Times? 25 25 The lower discount rate increased the plan, it provides for a larger amount of Page 294 Page 296 1 1 ARBITRATION - VOLUME II ARBITRATION - VOLUME II 2 2 money coming in than if there were a higher The Times' withdrawal liability. 3 3 discount rate. Q Putting aside the discount rate, 4 4 are there other assumptions that an actuary Now, that obviously makes it easier 5 5 for the ongoing employers to fund the has to make in computing a plan's ordinary 6 benefits. And certainly for the Union side, 6 funding needs? 7 7 it makes it easier. The Union doesn't have A Yes, there are other assumptions. to negotiate large contribution increases or 8 8 Some examples would be the 9 9 perhaps benefit declines they otherwise mortality rate assumption, the percentage of 10 would have to do if there was less money in 10 the retirees who are married, the age at 11 11 which nonretired participants would commence the plan. 12 Q In your opinion, are you seeing a 12 benefits. Those are kind of the key ones. 13 13 trend in connection with using lower O Okay. 14 discount rates to calculate withdrawal 14 And these assumptions that are used 15 15 liability? in connection with the plan's ordinary 16 Yes, I am. 16 funding needs, are assumptions on these A 17 17 And why is that? issues also required to be made in order to 18 Well, the reasons are as we just 18 compute withdrawal liability? 19 spoke about earlier. 19 Yes, they are. Α 20 The trustees are going to want 20 And why is that? 0 21 that -- is favorable in the view of most 21 Α The calculations are really very 22 trustees. There may be some exceptions 22 similar. I mean, there's not -- while there 23 where an employer plans on being in the fund 23 are some minor technical differences, they 24 for a very long time, but for most trustees 24 are essentially the same calculations for 25 it would be preferable to have a lower 25 the same purposes.

	Page 297	Page 299
1		¹ ARBITRATION - VOLUME II
2	ARBITRATION - VOLUME II	
3	Q And in the course of your review,	naomity as it aid for plan fanding
4	did you review the other actuarial assumptions that the actuary applied here in	purposes:
5		A wen, I have an idea that they are
6	calculating The New York Times' withdrawal	 using a regulation from the PBGC to determine their discount rate or their
7	liability?	determine their discount rate of their
8	A Yes, I did.	mivestment return assumption. And that
9	Q And do you have an opinion on whether, aside from the discount rate, the	regulation of full from the 1 BGC has
10	Pension Fund here used similar or different	attached to it an accompanying expense load calculation.
11		carculation.
12	assumptions on these issues for withdrawal	So very often when you use these rates you use the expense load that's in
13	liability than for ordinary funding	that same or associated with that
14	purposes? A Yes. Aside from the discount rate	that same of associated with that
15		regulation.
16	or investment return assumption, they used the same assumptions for withdrawal	Q So is the change to the expense load or expense charge necessarily the
17		load of expense charge necessarily the
18	liability purposes as they did for regular funding purposes.	byproduct of the change that was made in the investment return rate?
19	Q Now I'd like you to turn to the	19 A It is related to it. It could
20	white book and to Exhibit 1.	certainly be a byproduct of it.
21		21 Q Okay. Thank you.
22	A Okay. Q And what is this document, sir?	Now I want to ask a couple
23	A This appears to be the withdrawal	23 questions about a concept called the Segal
24	liability assessments from the Fund to	24 blend.
25	The New York Times.	25 Are you familiar with the term
	THE NEW TOTA THIES.	Are you failling with the term
	Page 298	Page 300
1		
1 2	ARBITRATION - VOLUME II	¹ ARBITRATION - VOLUME II
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1	ARBITRATION - VOLUME II	1	ARBITRATION - VOLUME II
2	my understanding are derived from annuity	2	A It's a rate that's associated with
3	purchase rates. The PBGC solicits or has	3	bonds or other debt obligations that
4	some way of getting input on annuity	4	essentially have no risk of repayment or no
5	purchase rates from insurers, and then by	5	default risk.
6	some methodology that's not clear, that I	6	Q Is the concept of risk-free rate a
7	don't believe the PBGC publishes, they	7	concept that multiemployer plan actuaries
8	convert those rates, those rates into	8	routinely use in their practice or routinely
9	basically these discount rates that they	9 10	consider?
10	show in the regulations.	11	A Routinely consider? Only in terms
11 12	Q Let me ask a base, fundamental	12	of maybe setting up a building block
13	question.	13	approach to setting their investment return.
14	Are the PBGC rates interest rates?	14	Q Do you have an opinion on whether
15	A They are really discount rates, I	15	high-grade corporate bond rates are a type of risk-free rate?
16	would say, more than anything else, but	16	
17	sometimes people may use the term "interest	17	A I think they're often considered a type of risk-free rate or very close to a
18	rate."	18	risk-free rate.
19	Q And you indicated that the PBGC rates or PBGC interest rates are derived by	19	ARBITRATOR IRVINGS: High-grade
20	that agency from commercial insurance	20	corporate bond, is that what you
21	company annuity purchase rates; is that	21	said?
22	correct?	22	MR. MILLER: Yes, I did.
23	A Correct.	23	BY MR. MILLER:
24	Q What is your understanding of how	24	Q And what other types of securities
25	insurance company annuity rates are derived?	25	might fall into the bucket or a concept of
	insurance company armatey rates are derived.		
	Page 302		Page 304
1		1	
1 2	ARBITRATION - VOLUME II	1 2	ARBITRATION - VOLUME II
2	ARBITRATION - VOLUME II A My understanding of how insurance	1 2 3	ARBITRATION - VOLUME II risk-free securities?
	ARBITRATION - VOLUME II A My understanding of how insurance company annuity rates are derived is	2	ARBITRATION - VOLUME II risk-free securities? A US Government bond.
2	ARBITRATION - VOLUME II A My understanding of how insurance company annuity rates are derived is insurance companies look at the duration of	2	ARBITRATION - VOLUME II risk-free securities? A US Government bond. Q What is your understanding of the
2 3 4	ARBITRATION - VOLUME II A My understanding of how insurance company annuity rates are derived is insurance companies look at the duration of the obligations they're picking up, and they	2 3 4	ARBITRATION - VOLUME II risk-free securities? A US Government bond. Q What is your understanding of the origins of the Segal blend method?
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1	ARBITRATION - VOLUME II	1	ARBITRATION - CONFIDENTIAL
2	it should be, or lower who is going to	2	estimate of the plan's anticipated
3	challenge a number that is lower.	3	investment returns.
4	ARBITRATOR IRVINGS: I was	4	Q Has your position on use or, more
5	going to ask you about that twist.	5	particularly, the inapplicability of the
6	MR. MILLER: I was going to ask	6	Segal blend method ever caused you
7	a clarifying question.	7	difficulties with a client for which you
8	ARBITRATOR IRVINGS: Just	8	were serving as the enrolled actuary?
9	making sure we are paying attention.	9	A Yes, it has.
10	THE WITNESS: Makes me feel	10	
11	better.	11	(Whereupon, the following testimony
12	MR. MILLER: Thanks.	12	is deemed Confidential:)
13	BY MR. MILLER:	13	
14	Q In your experience, is the Segal	14	
15	blend commonly used today by multiemployer	15	
16	plan actuaries?	16	
17	A In my experience, it's almost	17	
18	exclusively used by actuaries at the Segal	18	
19	Company, but it's not commonly used by	19	
20	actuaries outside of the Segal Company.	20	
21	Q Do you as an actuary use the Segal	21	
22	blend when calculating or estimating	22	
23	withdrawal liability for multiemployer funds	23	
24	for which you are or were the enrolled	24	
25	actuary?	25	
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1		1	_
1 2	ARBITRATION - VOLUME II	2	ARBITRATION - CONFIDENTIAL
3	A I'm not an enrolled actuary now but in the plans where I was the enrolled	3	BY MR. MILLER: Q And what client is that?
4	actuary, I did not use the Segal blend	4	Q And what client is that? THE WITNESS: Are we
5	method.	5	stipulating this is confidential?
6	Q Why did you not use the Segal blend	6	MR. MILLER: Mr. Richman?
7	method?	7	MR. RICHMAN: Yeah, I think all
8	A In my view, the Segal blend method	8	of the actuarial stuff should be
9	has nothing to do with my idea of the best	9	confidential.
10	estimate of the return of the fund and,	10	MR. MILLER: And we agree.
11	really, in most cases could not be the best	11	ARBITRATOR IRVINGS: Okay.
12	estimate of the investment return	12	Yes.
13	anticipated return under the fund.	13	THE WITNESS: So everything I'm
14	Q So can you explain why in your	14	talking about here on will be
15	judgment the Segal blend method is in	15	confidential.
16	conflict with actuarial best estimates of	16	MR. RICHMAN: During this
17	anticipated experience?	17	proceeding.
18	A Because the Segal method doesn't	18	ARBITRATOR IRVINGS: This is
19	take into account how the fund is actually	19	not a free pass for the rest of your
20	invested or intended to be invested, and it	20	life.
21	assumes that a certain part of the assets	21	MR. MILLER: No free passes for
22	are going to be basically invested in fixed	22	Mr. Richman.
23	income securities.	23	BY MR. MILLER:
24	And unless that's the trustees'	24	Q Go ahead.
25	intent, I don't see how that can be a best	25	A The client was the Central States
		I	

Page 309 Page 311 1 1 ARBITRATION - CONFIDENTIAL **ARBITRATION** 2 2 BY MR. MILLER: Teamsters Fund. 3 3 O And can you describe what the Q Let's return to the subject of 4 difficulties were and the upshot in 4 application of PBGC rates and calculation of 5 5 connection with that client and your withdrawal liability. 6 6 position on the inapplicability of the Segal Can you think of any reason to use 7 7 PBGC rates, particularly in the current method? 8 8 This client, the Central States environment, in calculating withdrawal Α 9 9 Teamsters Fund, when I was the actuary in liability if the actual multiemployer 10 10 pension plan's assets are not invested in 2005, 2006 into early 2007, I think, was high-grade corporate bonds or equivalent 11 experiencing great difficulties. It was a 11 12 12 very unfunded plan. low-risk investments? 13 And United Parcel Service, UPS, was 13 A Well, it wouldn't make sense to me 14 14 the largest employer in the fund, and it was under a standard where you need to have the 15 15 best estimate of anticipated experience pretty well known that they wanted to get 16 16 out and they were very likely going to be under the plan. 17 17 And why is that? pulling out of the fund. And everyone from Q 18 Because the expected return on such 18 Hoffa, Junior to -- you know, wanted to make 19 19 sure either keep them in the fund or, if a fund would be higher than the PBGC rates, 20 they're leaving, that they're going to pay a 20 probably considerably higher in this day and 21 21 very hefty price for it. 22 22 And so eventually the understanding Do you have an opinion on whether 23 23 the Segal blend represents an actuarially became, well, withdrawal liability 24 assumptions would be a good way to do that. 24 reasonable approach to valuation of a plan's 25 However, you know, I had never used 25 unfunded vested benefits for withdrawal Page 310 Page 312 1 ARBITRATION - CONFIDENTIAL 1 **ARBITRATION** 2 2 the Segal blend and was not really liability purposes? 3 3 comfortable with the idea of the Segal Α I do. 4 4 blend. So they decided to hire Segal to be And what is that opinion? 0 5 5 the fund's actuary because Segal was well My opinion of that is actuarial Α 6 6 known as having used that and having -- at unreasonable in the aggregate. 7 7 And why is that? least it would not be as suspicious a 8 8 À Because the funding assumptions -change. 9 9 So you were terminated by the they're using the regular funding 10 10 assumptions which are reasonable and have Central State's Teamsters Fund as its 11 11 enrolled actuary? attested they're best estimates for every 12 12 other purpose except for the investment A Correct. 13 And as a consequence of this 13 O return assumption. 14 14 Now, for regular funding they are matter? 15 15 attesting to the 7.5 percent as being the Correct. Α 16 And did they in fact retain Segal? 16 best estimate of the anticipated experience Q 17 17 or investment return under the fund which Α They did. 18 18 0 And did UPS indeed withdraw? makes sense. And I certainly believe and 19 19 They did. concur with that. Α 20 20 And was the Segal blend method But then they inexplicably use a 0 21 21 indeed applied to determine the withdrawal lower rate for that one purpose and that one 22 22 liability? purpose only. And that one rate has a very 23 23 To the best of my knowledge. I did material impact on the obligations. 24 24 not see the calculation. Who serves as the actuary for the 25 25 NMDU Pension Fund here? (End of Confidential portion.)

Page 313 Page 315 1 **ARBITRATION** 1 **ARBITRATION** 2 2 A My understanding it's the Segal O I see. 3 3 Company. In calculating the monetary impact 4 And do you have an understanding 4 of the use of the Segal blend assumptions 5 whether the Segal Company in fact used the 5 here, were you able to go back the full 6 6 Segal blend method to calculate withdrawal 20 years? 7 7 liability against The New York Times? À No, I was not. 8 8 Yes, they did. So do you have an opinion on Α 9 9 And did you calculate the monetary whether the impact that you did calculate, Q 10 10 the roughly 6, \$7 million impact is the impact of the use of the Segal blend 11 assumptions here as opposed to the use of 11 precise calculation of the impact? 12 the ordinary 7.5 percent funding rate? 12 It is only precise if the 13 13 Yes. I did. assumption were to change in that year, and Α And can you summarize what your 14 14 that's probably not the best way to do it. O 15 1.5 calculation was of that differential? So it is probably not the precise 16 16 A My calculation was somewhere above answer. 17 \$19 million versus the Fund's calculation I 17 Okay. And what would you need to O 18 18 think close to \$26 million. do to make the precise calculation of the 19 19 impact of application of the Segal blend on So divide what they calculate by 20 what I calculated is about a 33 percent 20 the withdrawal liability assessment against 21 21 difference; 33 percent higher than the value The Times? 22 22 I would have gotten using the Fund's regular A I would need really the last 23 23 assumptions. 20 years of reports and all of the backup 24 24 And briefly summarize how you went calculations. There is a lot of 25 25 complications that would get involved in about making that calculation. Page 314 Page 316 1 **ARBITRATION** 1 ARBITRATION 2 2 A The numbers that I needed to do the that. 3 3 calculation were already in the Segal Have you made any estimate on what O 4 4 the amount would be if you in fact received reports. 5 5 all of the data going back the 20 years to So I simply redid the calculations, 6 6 only changing the assumption in the last perform that calculation? 7 year, the number I had readily available, 7 I have made some further estimates, 8 8 and was able to redetermine what the yes. 9 9 withdrawal liability would have been based O And what is that estimate? 10 10 on that assumption. Since this came up in my deposition 11 11 Well, let's drill down on that some as to whether, you know, what impact it Q 12 might have and I think some guesses at the 12 more. 13 13 time, I looked back at what I did have which A Okav. 14 14 O What method does this multiemployer was four years going back from, I think from 15 Pension Fund use to calculate withdrawal 15 May 31, 2009. 16 16 And based on that, the number that liability? 17 17 They use the so-called presumptive I calculated would have been even lower than 18 18 method. what I calculated using just the last year 19 19 by roughly another half a million dollars. And how many years in looking back 20 20 on underfunding does a multiemployer plan And by "the lower number," you mean 21 21 examine in connection with application of the withdrawal liability number? 22 the presumptive method? 22 Yes, lower withdrawal liability 23 23 The presumptive method goes back number is what I mean. 24 24 20 years in valuations. So there's 20 years And I think you previously 25 25 of calculations to review. testified that you did review the other

Page 317 Page 319 1 1 ARBITRATION **ARBITRATION** 2 2 actuarial assumptions that Segal employed in allow in the aggregate to be reasonable. 3 3 And, you know, as we've stated earlier, the estimating and valuing the Pension Fund's 4 4 unfunded pension benefits for withdrawal impact is significant, at least 33 percent. 5 5 By virtue of calculating the liability purposes. 6 6 Is that a correct summary of your withdrawal liability for The Times using the 7 7 prior testimony on that subject? Segal blend as opposed to the ordinary 8 8 7.5 percent fund rate, do you have an Yes it is 9 9 And those assumptions were in what opinion on whether there will be an impact 10 10 on the other contributing employers to the regard? What types of additional Pension Fund if the 7.5 percent best 11 assumptions were they? 11 12 12 Those were the Mortality Table estimate is ultimately realized? 13 13 assumptions, the percentage of retirees, Α Yes. 14 14 married retirement rate assumptions and any O And what is that opinion? 15 15 other assumptions that were shown in the Α Well, as I mentioned earlier, by 16 16 one employer paying more than its fair 17 17 share, by one employer paying based on a low I reviewed those against my general 18 18 knowledge of multiemployer plans and the discount rate but the Fund actually 19 19 specific type of plans and plan provisions achieving a high investment return, it means 20 20 they had. And they all struck me as that portion of the plan would become more 21 perfectly reasonable in line what I would 21 than fully funded. 22 22 typically expect assumptions to be. Since it's one pool of assets to 23 23 provide for one set of benefits, the other Thank you. employers would necessarily get the benefit 24 With that in mind, assuming that 24 25 25 of that 7.5 percent return over the Segal these other assumptions that were employed Page 318 Page 320 1 ARBITRATION 1 ARBITRATION 2 2 were actuarially reasonable, do you have an blend return. 3 3 opinion on whether the actuarial assumptions Q And just to drill down on this a 4 4 used to compute the unfunded vested benefits little further. 5 5 here for this withdrawal liability So do you have an opinion on 6 6 calculation were reasonable or unreasonable whether employers would be better off or 7 7 worse off following the withdrawal of in the aggregate? 8 8 I do have an opinion. The New York Times in the event the best Α 9 9 O And what is that opinion? estimate of 7.5 percent is obtained relative 10 10 That they were not reasonable in to where they would be if there had not been 11 11 an assessment of withdrawal liability? the aggregate. 12 12 And why is that? A Yes. For reasons that we just 13 stated, the other employers are better off 13 Because all of the assumptions but 14 14 one were reasonable and presumably best because The Times is essentially overfunding 15 its portion of the unfunded benefits. 15 estimate assumptions. 16 16 And in such event, would The Times The one assumption that was not was 17 17 in effect be paying more or less than its an assumption that was an investment return 18 allocable share of the unfunded vested 18 assumption which was much lower than what 19 benefits in the Pension Fund? 19 appeared to be the best estimate return. 20 20 Α More And that one assumption has a very large 21 21 impact on the numbers. It's the most Mr. French, I recall you testified

22

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25

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24

25

important assumption.

And like I said, there's no

go in the other direction that would even

counterbalancing other assumption that would

moments ago that you do not use the Segal

blend approach when you -- or did not use

the Segal blend approach when you served as

an enrolled actuary to a multiemployer fund.

Page 321 Page 323 1 1 ARBITRATION ARBITRATION 2 2 What was your practice in And in that circumstance, the 3 3 connection with calculating or estimating liabilities of the fund would go up. 4 4 withdrawal liability? So in anticipation of that 5 5 My typical practice on withdrawal occurring, the withdrawal liability was 6 6 liability was to use the same investment changed -- well, I changed the withdrawal 7 7 return assumption as for regular funding. liability assumptions to reflect that 8 8 Was there ever an occasion in which possibility or that if a big employer or two 9 9 you departed from that general practice? or more withdrew from the fund and the 10 10 A Yes. trustees were going to change the investment 11 11 mix so that it would be a more O And what was that? 12 12 I think on one occasion where under conservative -- and "more conservative." Α 13 13 the Consolidated Retirement Fund, was a meaning lower investment return portfolio --14 14 then, of course, that would make sense to client of mine --15 15 And can you explain the use a lower withdrawal liability assumption. 16 16 circumstances in connection with that Q And in that situation, did you have 17 17 departure from your practice? an expectation of what the funding rate 18 18 would be in connection with that plan Α Yes. 19 19 The Consolidated Retirement Fund is following the withdrawal of one or more of 20 a fund who had basically four large key 20 these significant contributors? 21 21 employers. One of those employers, UNITE Yes. If the withdrawals indeed 22 22 HERE, was threatening to leave the fund. It occurred and the trustees followed through 23 23 was probably one of the strongest and changed the investment portfolio, 24 24 financially of the employers. And the investment mix to be more conservative, 25 25 second employer, I think was Amalgamated then, of course, the ongoing regular funding Page 322 Page 324 1 1 ARBITRATION **ARBITRATION** 2 Bank, was in grave danger of going out of 2 assumptions would change to a lower discount 3 3 business. And there were other issues with rate as well. 4 4 some of other employers especially related, Q And did you have any expectation of 5 5 whether and the extent to which that revised as they're kind of interrelated entities in 6 6 funding rate would migrate to the withdrawal some respects. 7 7 liability discount rate? So there was a concern that there 8 8 would be a very large withdrawal or several A Well, at that point --9 9 ARBITRATOR IRVINGS: I'm sorry. large withdrawals from the plan and whether 10 in the event of that occurring, what would 10 I missed that. 11 11 happen to the fund. MR. MILLER: Sure. 12 And, you know, trustees in this 12 BY MR. MILLER: 13 13 fund were also plan participants. This was Q Did you have any expectation of 14 a union staff fund where the trustees of the 14 whether the revised funding rate that would 15 15 fund had very large, very substantial occur as a consequence of the change in the 16 benefits being paid from this fund. 16 investment of assets would migrate to the 17 So their indication to me was, 17 withdrawal liability discount rate that you 18 look, if this kind of thing happens, we're 18 had determined? 19 ARBITRATOR IRVINGS: I guess going to have to change -- we are not going 19 20 to invest -- this was a fund that was 20 I'm confused because I thought he 21 invested very heavily in equities and real 21 just said that he started with the 22 estate and alternative investments. They're 22 lower rate for withdrawal liability 23 going to very seriously consider changing 23 and then said it would migrate to the 24 the investment portfolio mix if these strong 24 funding. 25 25 employers withdraw from the plan. MR. MILLER: Why don't you

	Page 325		Page 327
1	ARBITRATION	1	ARBITRATION
2	clarify.	2	about this, you know, there would be
3	THE WITNESS: What I said, I	3	challenges to this, that we wanted to
4	would expect that the funding rate,	4	document it carefully.
5	once the trustees actually changed	5	So I do remember we wrote it
6	the portfolio and the withdrawal	6	carefully. Ron looked at it, reviewed it,
7	actually occurred, the funding rate	7	we sent it out to the trustees.
8	would come down.	8	And it basically set forth the
9	And, of course, at that point the	9	rationale as to why we're doing it and I
10	funding rate and the withdrawal liability	10	believe it set forth kind of how we came
11	rate would be more or less in concert	11	down to the number.
12	unless, of course, we expected further	12	Q Just to confirm, do you have a copy
13	withdrawals and further making more	13	of that memo?
14	conservative investments in the fund that	14	A No, I don't.
15	would then require or necessitate a	15	Q Do you happen to know whether the
16	further lowering of the regular funding	16	investment mix changes ultimately were made?
17	rate.	17	A To the best of my knowledge, they
18	ARBITRATOR IRVINGS: Okay. Got	18	were not.
19	it.	19	Q And why was that?
20	MR. MILLER: Thank you.	20	A To the best of my knowledge, no
21	BY MR. MILLER:	21	employer or no substantive employer ever
22	Q How were you advised in connection	22	withdrew from the fund.
23	with this matter of the anticipated changes	23	Q Do you continue to serve as the
24	to the investment asset mix?	24	enrolled actuary for the Consolidated
25	A Well, as you can imagine, this was	25	Retirement Fund?
			144444
	Page 326		Page 328
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION a very big concern.	2	ARBITRATION A No.
	ARBITRATION a very big concern. There were quite a number of		ARBITRATION
2 3 4	ARBITRATION a very big concern. There were quite a number of meetings surrounding this and, you know,	2 3 4	ARBITRATION A No. Q And when did you stop serving in that capacity?
2 3 4 5	ARBITRATION a very big concern. There were quite a number of meetings surrounding this and, you know, what are we going to do.	2 3 4 5	ARBITRATION A No. Q And when did you stop serving in that capacity? A I believe when I left employment
2 3 4	ARBITRATION a very big concern. There were quite a number of meetings surrounding this and, you know, what are we going to do. And my meetings with some of the	2 3 4 5 6	ARBITRATION A No. Q And when did you stop serving in that capacity? A I believe when I left employment with Buck in July or so of 2013.
2 3 4 5 6 7	ARBITRATION a very big concern. There were quite a number of meetings surrounding this and, you know, what are we going to do. And my meetings with some of the trustees, I asked that very question: In	2 3 4 5 6 7	ARBITRATION A No. Q And when did you stop serving in that capacity? A I believe when I left employment with Buck in July or so of 2013. Q Switching subjects.
2 3 4 5 6 7 8	ARBITRATION a very big concern. There were quite a number of meetings surrounding this and, you know, what are we going to do. And my meetings with some of the trustees, I asked that very question: In the event of this withdrawal, would you	2 3 4 5 6 7 8	ARBITRATION A No. Q And when did you stop serving in that capacity? A I believe when I left employment with Buck in July or so of 2013. Q Switching subjects. Have you had a chance to review the
2 3 4 5 6 7 8	ARBITRATION a very big concern. There were quite a number of meetings surrounding this and, you know, what are we going to do. And my meetings with some of the trustees, I asked that very question: In the event of this withdrawal, would you change the investment portfolio and make it	2 3 4 5 6 7 8	ARBITRATION A No. Q And when did you stop serving in that capacity? A I believe when I left employment with Buck in July or so of 2013. Q Switching subjects. Have you had a chance to review the expert report filed in this matter by the
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1	ARBITRATION	1	ARBITRATION
2	Q And that would be as opposed to the	2	ARBITRATOR IRVINGS: Might as
3	blending approach that you described for	3	well.
4	the, indeed, Segal blend method?	4	THE WITNESS: I'm fine. Thank
5	A That's correct.	5	you.
6	Q And do you have an understanding of	6	ARBITRATOR IRVINGS: Do you
7	whether Dr. Kra believes that the risk-free	7	need a break?
8	rate should be employed even if the fund	8	MR. RICHMAN: No.
9	that is employing that risk-free rate has	9	ARBITRATOR IRVINGS: Finish the
10	assets that have an expected return above a	10	wrap then.
11	risk-free rate?	11	MR. MILLER: Sure. Thank you.
12	A That is my best understanding based	12	BY MR. MILLER:
13	on his report and his deposition.	13	Q What do you understand to be Dr.
14	Q Do you agree with that?	14	Kra's basis for using a risk-free rate
15	A I do not.	15 16	approach to value liabilities for withdrawal
16	Q And why not?		liability purposes only?
17 18	A I don't because it seems the	17 18	A Well, my understanding, again based
19	wording of the law is that this has to be	19	on his report and deposition, is that since
20	the actuary's best estimate of anticipated	20	the withdrawing employer will pay a single sum of money and, therefore, doesn't take on
21	experience under the plan. Well, the only experience that the	21	the risk of those investments, that if the
22	plan can have is the actual investment	22	investments earn less than expected that he
23	return. And if the plan is not invested in	23	has effectively underfunded his portion of
24	purely risk-free investments, it is going to	24	the plan.
25	be expected to have a higher return. Your	25	Q And what is your reaction to that
			•
	Page 330		Page 332
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION best estimate is going to be a higher number	2	ARBITRATION argument?
2	ARBITRATION best estimate is going to be a higher number than the risk-free return; otherwise, why	2 3	ARBITRATION argument? A My reaction to that argument is,
2 3 4	ARBITRATION best estimate is going to be a higher number than the risk-free return; otherwise, why would you be investing in those things.	2 3 4	ARBITRATION argument? A My reaction to that argument is, yes, if in fact the plan doesn't achieve
2 3 4 5	ARBITRATION best estimate is going to be a higher number than the risk-free return; otherwise, why would you be investing in those things. Q In your experience, is it common	2 3 4 5	ARBITRATION argument? A My reaction to that argument is, yes, if in fact the plan doesn't achieve what we expect, then, sure, they're going to
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2 3 4 5 6 7	ARBITRATION best estimate is going to be a higher number than the risk-free return; otherwise, why would you be investing in those things. Q In your experience, is it common for actuaries to use the risk-free rate as the discount rate for funding purposes?	2 3 4 5 6 7	ARBITRATION argument? A My reaction to that argument is, yes, if in fact the plan doesn't achieve what we expect, then, sure, they're going to underfund the portion of plan. Q Do you have a judgment as to
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1		_	
1	ARBITRATION	1	ARBITRATION
2	Q But, nonetheless, you view that	2	A That would be a bias.
3	theory as being in conflict with actuary	3	Q What if, as a consequence of a
4	principle?	4	withdrawal, there would be a significant
5	MR. RICHMAN: Objection.	5	drop in the contributions of the Pension
6	ARBITRATOR IRVINGS: You want	6	Fund with not a material prospect of future
7	to rephrase it.	7	growth in participants, wouldn't that case
8	BY MR. MILLER:	8	justify perhaps a lower discount rate for
9	Q Do you have an opinion on whether	9	the withdrawing employer?
10	in the event of such an impact Dr. Kra's	10	A Not unless the trustees are going
11	theory would be consistent with actuarial	11	to, as in the case of, say, the Consolidated
12	principles?	12	plan, going to change the investment mix of
13	A Yes, I have an opinion. Yeah, the	13	the fund.
14	actuarial principle is, look, we expect 7	14	If you are going to keep the
15	and a half percent. Maybe it will be higher	15	investment mix where it was, then the change
16	than 7 and a half percent. Maybe it will be	16	in the contribution the number of
17	lower than 7 and a half. But on average we	17	employers in the fund doesn't impact what
18	expect 7 and a half.	18	your expectation is for the investment
19	So if you are going to use 4 or 5,	19	return of the fund in any material way.
20	or 6, well, that can't be your best	20	Q In the context of a termination of
21	expectation because, yes, if it only earns	21	a single-employer pension plan, what
22	5, they will underfund their portion of the	22	interest rates are used as the discount rate
23	plan.	23	to value vested benefits?
24	But if the plan earns 9, well,	24	A My understanding in a distressed
25	they're going to overfund their portion of	25	termination of a single-employer plan, the
	Page 334		Page 336
1	Page 334 ARBITRATION	1	Page 336 ARBITRATION
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION the plan.		
2	ARBITRATION the plan. And, you know, we don't know. It	2	ARBITRATION statute requires the use of PBGC rates for discount rates.
2	ARBITRATION the plan.	2 3	ARBITRATION statute requires the use of PBGC rates for discount rates.
2 3 4	ARBITRATION the plan. And, you know, we don't know. It could be 5, it could be 9, but the best estimate is 7 and a half.	2 3 4	ARBITRATION statute requires the use of PBGC rates for discount rates. Q And do you have an opinion on what the policy view or rationale is for
2 3 4 5	ARBITRATION the plan. And, you know, we don't know. It could be 5, it could be 9, but the best	2 3 4 5	ARBITRATION statute requires the use of PBGC rates for discount rates. Q And do you have an opinion on what the policy view or rationale is for employing PBGC rates to discount liabilities
2 3 4 5 6	ARBITRATION the plan. And, you know, we don't know. It could be 5, it could be 9, but the best estimate is 7 and a half. Q Are you familiar with the term	2 3 4 5 6	ARBITRATION statute requires the use of PBGC rates for discount rates. Q And do you have an opinion on what the policy view or rationale is for
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	Page 337		Page 339
1	ARBITRATION	1	ARBITRATION
2	occur.	2	and potentially prepare witness is
3	Q In the materials that you reviewed	3	prejudicial.
4	in connection with your engagement by	4	MR. RICHMAN: It's not
5	The New York Times, was there any evidence	5	prejudicial, first of all.
6	that the Pension Fund here was going to	6	This is a cross. And as the
7	annuitize a portion of the benefits as a	7	Arbitrator ruled yesterday with respect
8	consequence of The New York Times	8	to crosses, the exhibits themselves don't
9	withdrawal?	9	need to be placed on a witness list. I
10	A I did not see any evidence of that	10	don't need to put this in as an exhibit.
11	sort and I didn't see any evidence of any	11	It is a decision of Arbitrator Jaffe
12	prior annuity purchases, at least in the few	12	where there is a discussion of the number
13	years that I looked at.	13	of multiemployer pension plans which
14	Q And one final question for	14	Segal represents. And I think what I
15	completeness.	15	would like to do is to ask the witness if
16	*	16	
17	Mr. French, what is your expert	17	he has any reason to believe that that is
18	opinion regarding the actuarial assumptions	18	incorrect.
19	used by the Pension Fund here to compute its	19	Now, I could bring in as a witness,
	unfunded vested benefits relating to	20	if we can't get that information,
20	The Times withdrawal?		somebody from Segal who has that
21	A From withdrawal liability purposes	21	information, but this is a whole lot
22	that they are actuarial unreasonable in the	22	easier.
23	aggregate.	23	MR. MILLER: There's going to
24	MR. MILLER: Thank you.	24	be a witness from Segal immediately
25	No further questions.	25	succeeding Mr. French. That question
	Page 338		Page 340
1		1	_
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION MR. RICHMAN: Take a few		ARBITRATION can be asked. And even if she is not
2	ARBITRATION MR. RICHMAN: Take a few minutes.	2	ARBITRATION can be asked. And even if she is not a definitive authority, she can
2	ARBITRATION MR. RICHMAN: Take a few minutes. (A brief recess was	2 3	ARBITRATION can be asked. And even if she is not a definitive authority, she can express her judgment as somebody who
2 3 4	ARBITRATION MR. RICHMAN: Take a few minutes. (A brief recess was taken.)	2 3 4	ARBITRATION can be asked. And even if she is not a definitive authority, she can express her judgment as somebody who has worked at Segal
2 3 4 5	ARBITRATION MR. RICHMAN: Take a few minutes. (A brief recess was taken.) MR. RICHMAN: Let's go. Get	2 3 4 5	ARBITRATION can be asked. And even if she is not a definitive authority, she can express her judgment as somebody who has worked at Segal ARBITRATOR IRVINGS: Well, I
2 3 4 5	ARBITRATION MR. RICHMAN: Take a few minutes. (A brief recess was taken.) MR. RICHMAN: Let's go. Get back on the record.	2 3 4 5 6 7	ARBITRATION can be asked. And even if she is not a definitive authority, she can express her judgment as somebody who has worked at Segal ARBITRATOR IRVINGS: Well, I think all of this is sort of much to
2 3 4 5 6 7	ARBITRATION MR. RICHMAN: Take a few minutes. (A brief recess was taken.) MR. RICHMAN: Let's go. Get back on the record. ARBITRATOR IRVINGS: All set.	2 3 4 5 6	ARBITRATION can be asked. And even if she is not a definitive authority, she can express her judgment as somebody who has worked at Segal ARBITRATOR IRVINGS: Well, I think all of this is sort of much to do about a tangential fact.
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1	ARBITRATION	1	ARBITRATION
2	without referencing Ira's, why don't	2	interest assumption used for ongoing funding
3	you simply say, "Does the number"	3	purposes?
4	MR. RICHMAN: All right. Okay.	4	A I don't know for certain. I'm sure
5	I'm not going to reference anything.	5	that I have looked at some Milliman reports.
6	BY MR. RICHMAN:	6	I haven't looked at them recently, but my
7	Q But does it sound approximately	7	recollection was that they typically use the
8	correct to you that Segal Company	8	regular investment return assumption, but
9	represented in 2008 approximately 415	9	you know, Milliman is one of those firms
10	multiemployer pension plans?	10	where each office is sort of independently
11	A It doesn't strike me as impossible.	11	run, and it's certainly a possibility each
12	It certainly seems reasonable reasonable	12	office does something different.
13	possibility.	13	Q Do you know whether Horizon uses a
14	Q A reasonable possibility. Okay.	14	discount rate that's different from the
15	How many multiemployer pension	15	investment assumption from time to time for
16	plans were there in about 2008?	16	some of its multiemployer plans?
17	A I don't know exactly. I'm going to	17	A I know one that you told me it is.
18	say, based on knowledge I have, roughly	18	So you know the answer to that question.
19 20	1,500.	19	I don't recall any others, but
21	Q 1,500 or 1,200?	20	there could be.
22	A I think it was closer to 1,500 but	22	Q For how long did the Segal Company
23	I didn't look it up for this because I	23	use the Segal blend?
24	didn't know it was going to come up. Q And who are the other large firms	24	A My understanding dating some time back to the 1980s.
25	Q And who are the other large firms that do who provide a significant amount	25	Q So I just want to see if we can pin
	that do who provide a significant amount		2 50 i just want to see ii we can pin
	Page 342		Page 344
1	ARBITRATION	1	ARBITRATION
2	of actuarial services to I'm sorry.	2	that down a little bit.
3	Withdraw that.	3	So the Multiemployer Act gets
4	Which other firms, other than	4	passed in 1981, right?
5	Segal, provide actuarial services to a	5	A That's my recollection. I wasn't
6 7	substantial number of multiemployer pension	6	working then, but
8	plans?	7 8	Q Wise guy.
9	A There's Kiron (ph.). There's Milliman. There's Buck. One time there was	9	And did the Segal Company use a
	Milliman. There's Buck. One time there was		different withdrawal liability method other
	Margar Thorals a whole host of reasonable	1 ()	than the Casal bland after the adaption of
10 11	Mercer. There's a whole host of reasonable	10 11	than the Segal blend after the adoption of
11 12	firms that provide services.	11 12	the MEPPA?
11	firms that provide services. Q What about Horizon?	11	the MEPPA? A I wouldn't know.
11 12	firms that provide services. Q What about Horizon? A And Horizon, yes. Thank you.	11 12	the MEPPA? A I wouldn't know. I don't know the history. I know
11 12 13	firms that provide services. Q What about Horizon? A And Horizon, yes. Thank you. Q Is it your understanding that the	11 12 13	the MEPPA? A I wouldn't know. I don't know the history. I know they used it in the '80s.
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11 12 13 14 15	firms that provide services. Q What about Horizon? A And Horizon, yes. Thank you. Q Is it your understanding that the Segal method is used by all of Segal's	11 12 13 14 15	the MEPPA? A I wouldn't know. I don't know the history. I know they used it in the '80s.
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1	ARBITRATION	1	ARBITRATION
2	it was implemented at that time for the	2	a phone meeting where it was discussed.
3	purpose of lowering withdrawal liability?	3	Q Okay.
4	A I can't say for certain one way or	4	Did this Task Force come out with
5	the other what purposes.	5	any papers or directives or any suggestions
6	Q Do you know what the rationale that	6	to practicing actuaries on how withdrawal
7	Segal provides for using the Segal method	7	liability should be calculated?
8	is?	8	A I don't remember anything on
9	A I've seen the rationale in	9	interest rates. I have a vague recollection
10	different places and explained it different	10	that there was something about maybe the
11	times.	11	actual benefits that are determined, but
12	It seemed to be related to the	12	Q But nothing on interest rates?
13	possibility of actually purchasing annuities	13	A Not that I can recall, no.
14	or going out and immunizing a portfolio.	14	Q The members of this committee were
15	But that explanation never made	15	aware, weren't they, that the Segal method
16	sense to me because it doesn't seem to be	16	was used almost exclusively by Segal as well
17	coupled with any actuality of doing that.	17	as by some other actuaries to calculate the
18		18	2
19	Q Okay. I just want to make sure I	19	interest rate for withdrawal liability, correct?
20	understand your answer.	20	
21	Is it your understanding of the	21	A Correct. I think most people in
22	Segal method that it's premised on the fund actually going out and buying annuities?	22	the industry are aware of that, and there
23		23	was at least one person from Segal on the committee.
24	A No. I'm saying it's premised on	24	
25	the concept that you know, why else would	25	Q Why didn't the committee express
25	you use that methodology as your best	23	its opinion as to the impropriety of using
	Page 346		Page 348
1	Page 346 ARBITRATION	1	Page 348 ARBITRATION
1 2	ARBITRATION estimate unless you thought you were either	1 2	
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	Page 349	Page 35	1
1	ARBITRATION	¹ ARBITRATION	
2	would be done in a formal statement, and	2 method was being used by the Segal Compan	. ,
3	there was no formal statement put out that I	and other actuaries to calculate withdrawal	· y
4	certainly would have been involved in and I	4 liability?	
5	certainly would have remembered it.	5 A I can't say we specifically	
6	Q You've also done work for the PBGC,	6 discussed it. Were they aware of it?	
7	as I understand it, correct?	Probably, but I would have to speculate. I	
8	A Yes, I have.	8 don't recall any specific discussion or	
9		9 information I had that they know that, but I	
10	Q On single or multiemployer side?	information I had that they know that, but I	
11	A Multiemployer side.	would telld to tilllik they would.	
12	Q Do you know whether the PBGC has	Q Do you know Bruce Perlman at the PBGC?	
13	issued the regulations that are referenced	I BGC !	
14	in ERISA for calculating I'm sorry, for	11 I know who he is.	
	actuaries choosing assumptions?	Q So you don't know min!	
15	A I'm going to assume that you mean	A I don't know min personally.	
16	the section of ERISA that instructs	Q Tou never worked with him:	
17	actuaries how to choose assumptions for	A I did not. I think he's an	
18	withdrawal liability purposes?	attorney, not an actuary.	
19	Q I'm talking about 4213, right?	Q I ou get to answer the questions.	
20	A I don't remember which section, the	Do I understand your testimony	
21	section numbers.	correctly today that it is your opinion that	
22	Q Okay. So 4213 says that "The	the use of the Segal blend for consulting	
23	corporation" which is referring to PBGC,	withdrawal liability is a violation of the	
24	right?	law?	
25	A Sounds right, yes.	MR. MILLER: Objection.	
			_
	Page 350	Page 35	2
1	Page 350 ARBITRATION	Page 35. ARBITRATION	2
1 2	_		2
	ARBITRATION	¹ ARBITRATION	2
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2 3 4	ARBITRATION Q "can prescribe by regulation actuarial assumptions which may be used by a plan actuary in determining the unfunded vested benefits of a plan for purposes of	ARBITRATION ARBITRATION RICHMAN: I said "Do I understand" BY MR. RICHMAN:	2
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¹ ARBITRATION	1 ARBITRATION
2 Q So that would mean it violates it?	The New York Times.
A Okay. If you want to say	BY MR. RICHMAN:
4 "violate," sure.	4 Q And I think your answer is yes?
5 Q For how long is the Pension Fund	5 A The answer is partially, yes.
6 here for how long has the Pension Fund	6 Q Partially. It's one of
here used Segal blend?	7 A One of the parts of the
8 A I don't know. At least as far back	8 calculation.
9 as I looked, I think back to 2005.	carculation.
	Q I wo components of the calculation:
Q Okay.	A Okay. Tes.
Do you have any reason to believe	And the other component is:
that the Begai blend was adopted by this	The I BGC lates.
i chiston i una foi une parposes of mercasing	Q Okay.
withdrawal liability?	Focusing on the investment
A I have no reason to think one way	assumption component, for what year was the
or the other.	investment assumption used to do The Times'
Q That's different from your	withdrawal liability calculation?
experience with the Central States	A I'm not sure I'm following your
19 Teamsters?	question. Sorry.
A That is correct.	Q So the Fund uses the Segal blend,
Q In the Segal blend that was used to	and the Segal blend used in part, the
calculate the Fund's withdrawal liability	interest assumption that was reported by the
includes an investment assumption, the	actuary, correct?
plan's ongoing funding investment	A Yes.
assumption, correct?	Q Okay. And I'm asking you for what
	T. Control of the Con
Page 354	Page 356
¹ ARBITRATION	¹ ARBITRATION
ARBITRATION A The regular ongoing investment	1 ARBITRATION 2 year.
¹ ARBITRATION	1 ARBITRATION
ARBITRATION A The regular ongoing investment	ARBITRATION year. A For every year that I looked at it. Q Okay. I'm just focusing on the
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	Page 357		Page 359
1	ARBITRATION	1	ARBITRATION
2	A Yes, I believe it would.	2	A Because they didn't.
3	Q Okay. So it would be the March 31,	3	Q Well, but you know all of the
4	2009 interest assumption?	4	information that you'd need to determine
5	A For that one part of the	5	whether it was an appropriate rate, you
6	calculation.	6	knew right? Yes?
7	Now, remember, it goes back	7	A Yes.
8	20 years, so each it matters each and	8	MR. MILLER: But, objection.
9	every year going back 20 years what that	9	You asked him that question in
10	assumption is. It affects the calculation.	10	connection with if the actuary had
11	Q And I keep saying March.	11	picked that assumption. Are you now
12	A I'm sorry.	12	asking him a different question?
13	Q It's May 31st.	13	MR. RICHMAN: We're beyond
14	A Thank you.	14	that. Stay with us.
15	Q But when you did your	15	BY MR. RICHMAN:
16	recalculation, what you focused on was the	16	Q So you had the information
17	last year, did you not?	17	A Yes.
18	A The one I used in my expert report,	18	Q to determine whether 6 and a
19	yes.	19	half percent, that's May 31, 2009, was a
20	Q So, and you testified here today	20	reasonable interest rate for the Pension
21	that you think the 7 and a half percent that	21	Fund, correct?
22	was used as the investment assumption for	22	A Yes. I could figure that out.
23	May 31, 2009 was a reasonable assumption,	23	Q Okay.
24	correct?	24	And as I understand it, in fact,
25	A Yes. And I do think that.	25	you examined the portfolio of the Fund for
	Page 358		Page 360
1	Page 358 ARBITRATION	1	Page 360 ARBITRATION
1 2	ARBITRATION	1 2	-
	ARBITRATION		ARBITRATION
2	ARBITRATION Q And would 7 percent have been a	2	ARBITRATION various years?
2 3	ARBITRATION Q And would 7 percent have been a reasonable assumption, if the actuary chose	2	ARBITRATION various years? A Yes.
2 3 4	ARBITRATION Q And would 7 percent have been a reasonable assumption, if the actuary chose that?	2 3 4	ARBITRATION various years? A Yes. Q So let's take a look at the portfolio as for the Pension Fund as of May 31, 2009.
2 3 4 5	ARBITRATION Q And would 7 percent have been a reasonable assumption, if the actuary chose that? A Possibly.	2 3 4 5	ARBITRATION various years? A Yes. Q So let's take a look at the portfolio as for the Pension Fund as of
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Page 361	Page 363
¹ ARBITRATION	1 ARBITRATION
MOTIVITOR	
today, if that's what you mean.	counsel to see if he s onay with this
Q Is this not in the Fund's audited financial statement.	because what we did was add this up. Of we
	could try out our matri skins.
Let's 100K at 1304.	WIR. WILDER. What is the
Widy och 13. Tes, but it's a	purpose of this:
different page.	WIR. RICHWAN. I want to show
8 Q If you look at Page 1564, it is the	the asset anotation.
⁹ financial statement, correct?	9 MR. MILLER: Okay. This is
A Yes, it would appear to be. Yes.	essentially a demonstrative exhibit,
Q Do you have any reason to believe	correct?
12 it's not?	MR. RICHMAN: It's not an
A I have no reason to believe it's	exhibit.
not. So, yes, I agree with you it appears	MR. MILLER: And we had agreed
15 to be.	on a deadline for use of
16 It's in the supplemental	demonstratives.
information. I mean, I don't have the bound	
report, but I think typically this is.	demonstrative. I'm not planning to
MR. RICHMAN: I mean, is there	use it as an exhibit. But if you
some question that this is not really	don't want to use it, we can all add
the report, Evan?	it up together.
MR. MILLER: I don't know	MR. MILLER: It is a
what do you know what a	demonstrative exhibit.
supplemental information is on? Do	MR. RICHMAN: That's fine. We
you know whether supplemental	can all add it up together and we can
Page 362	Page 364
¹ ARBITRATION	¹ ARBITRATION
information is part of the report?	be here for four days or five days.
³ THE WITNESS: It often is. I	THE WITNESS: I don't have a
⁴ just don't remember if it is in this	⁴ calculator with me.
5 specific case.	5 BY MR. RICHMAN:
6 BY MR. RICHMAN:	6 Q You can do math
7 Q You just testified previously that	A What math do you want me to do?
8 you didn't use this page, but you used a	8 Q I want you to add up certain
9 similar landscape page	9 numbers.
A No. Similar portrait page.	10 A Let me turn on my phone.
Q Portrait page, with this	MR. GARFIELD: We have an HP12C
information?	you can borrow.
MR. MILLER: But it was not	THE WITNESS: Thank you.
part of the supplemental information.	14 If we can use rounded numbers, make
The only issue is, is supplemental	it easier.
information part of the report.	MR. RICHMAN: Sure.
MR. RICHMAN: We can brief	17 BY MR. RICHMAN:
18 that. Okay?	Q So Collective Short-term Investment
19 ARBITRATOR IRVINGS: Go ahead.	19 Fund.
MR. RICHMAN: Or we can wait	Do you know what type of fund that
21 and call in an auditor.	21 is?
22 BY MR. RICHMAN:	A That is a fixed income fund of a
Q So let's look at the Fund's	23 sort.
investments as of May 31, 2009.	Q So what I'm going to be doing is
investments as of May 31, 2009. And I'm going to hand this to your	Q So what I'm going to be doing is adding up fixed income or bond funds.

D 205	Davis 267
Page 365	Page 367
¹ ARBITRATION	¹ ARBITRATION
And one category equity, in another	2 Q And so would it be accurate to say
³ category real estate, and a third category.	that the Fund was roughly 47 percent
4 A Okay.	invested in equity, 47 percent invested in
⁵ Q If you want to put that on the side	5 bonds and 6 percent invested in real estate?
of investment fund bond fund?	6 A As of this point in time, yes.
⁷ A Okay.	7 Q Now, on a scale from in terms of
8 Q Let's go down to the LongView Core	8 aggressiveness, how would you consider this
9 Bond Index Fund.	Fund to be invested as of this time?
10 A Okay.	A As of this time, based on these
Q That's also a bond fund?	numbers and, by the way, these numbers
12 A Yes. That certainly sounds like	don't look familiar to me because I did do
13 it.	this exact thing in my report. And I
Q And let's also take the Western	remember some are higher equity numbers.
Asset Core Bond Fund.	But assuming these numbers aren't
16 A Okay.	missing something that I'm not seeing right
Q Can you add those three up for us?	here, this would be a fairly typical fund,
18 A Well, we got 47,200,000.	maybe slightly less aggressive than a
Q Okay. Fair enough.	typical fund.
Now, let's add up the Russell 1000	Q Okay. And for this asset mix, what
Fund.	would you consider to be a reasonable
A The Russell 1000 Fund. So we'll	investment assumption?
23 call it 9.6.	WIK. WILLER. Lack Of
Q Okay. And this would be an equity	roundation. There's been no evidence
²⁵ fund?	that he engaged in any of the
Page 366	Page 368
¹ ARBITRATION	¹ ARBITRATION
1 ARBITRATION	1 ARBITRATION 2 actuarial methods to calculate an
1 ARBITRATION 2 A That would be an equity fund, I 3 believe.	1 ARBITRATION 2 actuarial methods to calculate an investment return assumption in
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	Page 369		Page 371
1	ARBITRATION	1	ARBITRATION
2	your question?	2	MR. RICHMAN: Look, there is an
3	BY MR. RICHMAN:	3	allocation mix at the time of May 31,
4	Q My question is: Given this asset	4	2009. This witness has already
5	mix and this is the May 31, 2009 asset	5	testified to in cross that this would
6	mix.	6	be the investment assumption that
7	A Based on this page?	7	would be used as a component in the
8	Q Yes.	8	Segal method.
9	Do you have any reason to believe	9	And what I'm simply trying to find
10	these numbers are wrong?	10	out is whether this component used in the
11	A Different pages of reports don't	11	Segal method is an appropriate number.
12	show the full asset values necessarily.	12	ARBITRATOR IRVINGS: And did he
13	There's certain things that may be missing	13	not already testify that the
14	from this page that are on some other page.	14	7.5 percent he found to be in the
15	Q What would be missing from this	15	
16	page that's on some other page?	16	aggregate a reasonable interest rate
17	A Some kind of accrual number, some	17	assumption?
18		18	MR. RICHMAN: Right. And I'm
19	kind of other fund besides these may be just the interest in common collected	19	going to debunk that, because what
20	funds I don't know offhand because I	20	I'm going to show is that it is at
21		21	most on the very high end of a
22	haven't studied this page before.	22	reasonable assumption and that when
23	I studied the other page where I	23	you take into account the asset mix
24	did look at the numbers which I show in my	24	at this time, which is the which
25	report, which would be much easier to look	25	is what the number which was the
25	at my report and just see based on that what	25	asset allocation that existed at the
	5 080		
	Page 370		Page 372
1	ARBITRATION	1	Page 372 ARBITRATION
1 2	ARBITRATION kind of return I would expect, rather than	1 2	_
	ARBITRATION kind of return I would expect, rather than looking at one point in time from a part of	2 3	ARBITRATION
2	ARBITRATION kind of return I would expect, rather than	2 3 4	ARBITRATION time for the number that was selected
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Page 375 Page 373 1 1 **ARBITRATION ARBITRATION** 2 2 To the extent that Mr. Richman is asset mix that existed at May 31, 3 3 attacking the 7.5 percent, he is, 2009 -- where I'm going with this is 4 ironically, attacking the best estimate 4 I want to know the range. 5 5 of his client's own actuary. Now, he's already said, when I said 6 6 7 and a half: Could have been 7, could That's point number one. 7 7 it have been 6 and a half, that would be Point number two is that Mr. French 8 8 testified this morning that there is a on the low end. 9 technical and elaborate process that 9 But he seems to be focused on a 10 10 actuaries go through as identified in different asset mix than the asset mix 11 11 that ASOP. He mentioned specifically that existed on the critical date which 12 12 this building block method to determine a is May 31, 2009. 13 13 best estimate assumption. And we can brief that issue about 14 14 Mr. Richman can ask, I have no whether that's the critical data or not. 15 15 issue with his asking Mr. French if he That's not an actuarial opinion. But in 16 16 engaged in a building block method our view, that's the critical date 17 17 analysis to essentially audit the because that's the date in which the 18 18 7.5 percent assumption. actuaries gotta look at the asset 19 19 But Mr. French is not equipped, by allocation and see what they're going to 20 20 his own testimony in the course of this come up with, with an investment 21 21 examination, to calculate his own best assumption. 22 22 estimate assumption, particularly in MR. MILLER: We have an actuary 23 23 light of what he just testified about the who apparently undertook a detailed 2.4 2.4 potential inadequacies and limitations of analysis in 2009 and made a 25 25 the information on that page. conclusion about what is the best Page 374 Page 376 1 1 **ARBITRATION ARBITRATION** 2 2 ARBITRATOR IRVINGS: Okay. Let estimate of investment performance 3 3 then, and that was repeated me try and understand. 4 4 Did you as part of your report subsequently each year. 5 5 calculate an interest rate investment Mr. Richman will have an 6 6 opportunity to examine that actuary, the assumption based on the asset mix, the 7 7 actuary for his client, and is certainly actual asset mix? 8 8 THE WITNESS: No. In part of free to ask that actuary what the range 9 9 my report, I showed this kind of was within the complex calculations she 10 10 calculation based upon a much bigger may have made and perhaps ask her why she 11 did not pick 7.5 percent or did pick 11 range of numbers and a much bigger 12 12 number of years. 7.5 percent as opposed to a different 13 13 I looked at the asset mix, and number. 14 14 based on that, and my knowledge of other But Mr. French is not equipped at 15 calculations I've done for funds of a 15 this juncture to make projections about 16 16 similar-type nature, determined that I where the range is of estimates for 17 17 believe 7 and a half percent was a either best estimate or the particular 18 18 reasonable best estimate. best estimate for this portfolio. 19 19 MR. RICHMAN: Let me go back to And I know from my own experience 20 20 on funds of this sort I've used that type the deposition. 21 21 ARBITRATOR IRVINGS: Sure. 22 22 MR. RICHMAN: And I'm going to ARBITRATOR IRVINGS: So what 23 23 are you asking him to do now? look at Mr. French's deposition on 24 24 December 8, 2014. MR. RICHMAN: Well, what I'm

asking him to do is based on the

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And there was a series of questions

	- 0.55		- 070
	Page 377		Page 379
1	ARBITRATION	1	ARBITRATION
2	that I was asking.	2	Our argument is that the withdrawal
3	I can read the whole thing or let	3	liability investment return assumption
4	me just pick a	4	was not the same as the funding policy
5	So I'm going to pick up on Page 82	5	assumption.
6	and Line 22.	6	If they believed that their own
7	"Question: That best estimate is	7	actuary's funding policy assumption was
8	Segal's best estimate, correct? And	8	wrong, they can ask their own actuary
9	that's the 7 and a half percent."	9	when she takes the stand.
10	And the answer was: "That is	10	But this is not relevant
11	Segal's best estimate, correct."	11	essentially and at bottom to our
12	"Question: Is that also your best	12	contention that it's precisely because
13	estimate?"	13	the two investment return assumptions
14	Mr. Miller objects to the form.	14	were not the same that the assumption
15	And the answer is: "My best	15	used for calculating the withdrawal
16	estimate is not what's relevant here but	16	liability is wrong.
17	it would certainly certainly that is a	17	ARBITRATOR IRVINGS: And I
18	reasonable assumption that would not be	18	fully understand your argument.
19	unusual for me to use as a best estimate	19	He apparently has a somewhat
20	assumption.	20	different argument.
21	"Okay. Would 6 and a half also be	21	And opinions have been offered that
22	a reasonable assumption?	22	this was a reasonable assumption.
23	"Objection to the form."	23	You can test that examination.
24	And I say, "Answer the question."	24	However, I'm not sure that a
25	"It could be in certain situations,	25	calculation based only on this page is
	Page 378		
	raue 370		Page 380
1	_	1	Page 380
1 2	ARBITRATION	1 2	ARBITRATION
2	ARBITRATION not in this one.	2	ARBITRATION MR. RICHMAN: I'm happy to
2	ARBITRATION not in this one. "Why not in this one?	2 3	ARBITRATION MR. RICHMAN: I'm happy to brief that.
2 3 4	ARBITRATION not in this one. "Why not in this one? "Because the actuaries already	2 3 4	ARBITRATION MR. RICHMAN: I'm happy to brief that. ARBITRATOR IRVINGS: Okay.
2 3 4 5	ARBITRATION not in this one. "Why not in this one? "Because the actuaries already certified that 7 and a half is their return.	2 3 4 5	ARBITRATION MR. RICHMAN: I'm happy to brief that. ARBITRATOR IRVINGS: Okay. MR. RICHMAN: I mean, I'm sure
2 3 4 5 6	ARBITRATION not in this one. "Why not in this one? "Because the actuaries already certified that 7 and a half is their return. And this is a very aggressively invested	2 3 4 5 6	ARBITRATION MR. RICHMAN: I'm happy to brief that. ARBITRATOR IRVINGS: Okay. MR. RICHMAN: I mean, I'm sure Evan will take a contrary view. We
2 3 4 5 6 7	ARBITRATION not in this one. "Why not in this one? "Because the actuaries already certified that 7 and a half is their return. And this is a very aggressively invested fund. It's a big fund. It's professionally	2 3 4 5 6 7	ARBITRATION MR. RICHMAN: I'm happy to brief that. ARBITRATOR IRVINGS: Okay. MR. RICHMAN: I mean, I'm sure Evan will take a contrary view. We think that's the accurate way to look
2 3 4 5 6	ARBITRATION not in this one. "Why not in this one? "Because the actuaries already certified that 7 and a half is their return. And this is a very aggressively invested fund. It's a big fund. It's professionally managed. That would be a low rate."	2 3 4 5 6	ARBITRATION MR. RICHMAN: I'm happy to brief that. ARBITRATOR IRVINGS: Okay. MR. RICHMAN: I mean, I'm sure Evan will take a contrary view. We think that's the accurate way to look at it.
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	Page 381		Page 383
1	ARBITRATION	1	ARBITRATION
2	period to ask him about what it would	2	So you are apparently able to do
3	be based on this allocation.	3	this calculation as we sit here.
4	ARBITRATOR IRVINGS: And you	4	A No. That's not what I said.
5	can certainly ask him whether that's	5	I said if this was the portfolio
6	a determination he can make simply	6	the whole time, even that's not
7	from this data. That's fine.	7	unreasonable. It may or may not be the
8	You know, I clearly have evidence,	8	return I would come up for this, but it is
9	his statement that he can't, but you are	9	not an unreasonable one.
10	free to ask the witness.	10	
11	MR. RICHMAN: Okay.	11	Q Given this portfolio, what do you
12	BY MR. RICHMAN:	12	view as the range of reasonable numbers?
13		13	A I don't have one. I don't have
14	Q So you testified on direct that	14	one. And I can't do that on the fly right
15	7 and a half percent is very reasonable and	15	here.
16	that the return is what you would expect.	16	Q But on the fly right here, you can
17	Do you remember that?	17	conclude that 7 and a half percent was
18	A Yes.	18	MR. MILLER: Not unreasonable.
19	Q And you base that on looking at		A Not unreasonable.
	what?	19	Q not unreasonable.
20	A If you look in my expert report, I	20	MR. RICHMAN: Excuse me. You
21	went through a fairly detailed analysis of	21	can't answer his questions.
22	how the Fund has been invested over the past	22	MR. MILLER: I was lodging an
23	few years. And I would not look at just one	23	objection.
24	date at one particular moment in time.	24	ARBITRATOR IRVINGS: What's the
25	I mean, funds often reallocate	25	objection?
		1	
	Page 382		Page 384
1		1	
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION assets at different points particularly at a		ARBITRATION MR. MILLER: The objection is
2	ARBITRATION assets at different points particularly at a year end, so I wouldn't look at this just	2	ARBITRATION MR. MILLER: The objection is it mischaracterizes his testimony.
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2 3 4 5 6	ARBITRATION assets at different points particularly at a year end, so I wouldn't look at this just one point in time. And my recollection from my report, this is about the lowest percentage. In fact, this looks lower than anything I	2 3 4 5 6	ARBITRATION MR. MILLER: The objection is it mischaracterizes his testimony. His testimony said that in connection with the work he did for his expert report, he made conclusions about whether 7.5 percent
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Page 385	Page 387
1 ARBITRATION	1 ARBITRATION
A Well, because I'm not sure it	about exactly what it means, but I think the
does you know, I didn't look at this	words "narrowest range" suggest exactly what
4 page.	they say, a narrow range.
5 Q I'm not asking you I'm asking	But there's no backup on this that
6 you based on the numbers on that page.	6 I'm aware of that gives guidance from the
A Is it possible? I don't know.	7 Triple A as to how exactly that would be
8 Maybe it is possible. But I'm not going to	8 determined.
9 sit here today and try to go through these	⁹ Q Are you familiar with something
numbers and give you an exact range of where	called the Pension Practice Council Practice
11 I think would be a reasonable assumption.	Note, May 2001, Selecting and Documenting
12 It's just not something you do on the fly	12 Investment Return Assumptions?
here.	¹³ A May 2001?
¹⁴ Q Okay.	14 Q Correct.
You indicated that you were the	¹⁵ A I don't remember that, no.
actuary for the CRF, correct?	MR. RICHMAN: I would like to
A I was the actuary for the CRF, yes.	show it to the witness.
¹⁸ Q What interest assumption did you	18 ARBITRATOR IRVINGS: First show
use there?	it to counsel.
A I used a 7.5 percent interest	MR. MILLER: We've not seen
assumption net of all plan expenses, if I	this document, so, Mr. Arbitrator, we
recall correctly.	object to use of this document in the
Q With respect to ASOP 27, what is	cross-examination. Obviously, this
the best estimate range?	is the first time we've seen it. We
A ASOP 27, I believe in section I	have not been advised that it would
Page 386	Page 388
_	-
_	¹ ARBITRATION
1 ARBITRATION 2 don't remember the exact section number	ARBITRATION be used. And there's been no laying
1 ARBITRATION 2 don't remember the exact section number	ARBITRATION be used. And there's been no laying
ARBITRATION don't remember the exact section number talks about a range of numbers more likely	1 ARBITRATION 2 be used. And there's been no laying 3 of a proper foundation for its use.
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	D 200		D 201
	Page 389	_	Page 391
1	ARBITRATION	1	ARBITRATION
2	ask the foundation questions, which	2	of the way actuaries operate.
3	were all appropriately raised.	3	Q Now, during your deposition, I
4	MR. RICHMAN: Okay.	4	asked you as to what the interest rate
5	BY MR. RICHMAN:	5	what interest rate would produce the same
6	Q So do you know what the American	6	result for calculating the Segal blend that
7	Academy of Actuaries is?	7	was used for The New York Times' withdrawal
8	A Yes, I do.	8	liability.
9	Q And you are a member or you were a	9	Do you recall that?
10	member?	10	A Yes.
11	A I am a member.	11	Q And you recall what your answer
12	Q You are still a member?	12	was?
13	A Yes, I am.	13	A Yes. I said that I hadn't done an
14	Q And do you know what the Pension	14	actual calculation. I had done a,
15	Practice Council of the American Academy of	15	metaphorically, back-of-the-envelope
16	Actuaries is?	16	calculation more or less in my head and came
17	A I don't think I was even an academy	17	up with something probably 6 and a quarter,
18	member back at that time. And I don't	18	6 and a half.
19	remember this particular note. And that's	19	Q Do you have any reason to believe
20	something that I think	20	that that estimate is incorrect?
21	Q You are jumping to a conclusion.	21	A Other than the fact that I hadn't
22	If you can just answer the question.	22	done a detailed calculation, no, but it
23	A I'm sorry. Sure.	23	could be. It results from the fact it's not
24	Q Do you know what the Pension	24	a true calculation. Of course, it could be
25	Practice Council of the American Academy of	25	wrong.
	Page 390		Page 392
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION Actuaries is?	2	ARBITRATION Q I'm going to want to show you
	ARBITRATION Actuaries is? A I'm not familiar with that phrase.	2 3	ARBITRATION Q I'm going to want to show you let's go to Exhibit 12.
2 3 4	ARBITRATION Actuaries is? A I'm not familiar with that phrase. Q And I think you've already answered	2 3 4	ARBITRATION Q I'm going to want to show you let's go to Exhibit 12. Do you have it?
2 3 4 5	ARBITRATION Actuaries is? A I'm not familiar with that phrase. Q And I think you've already answered you're not familiar with this note either.	2 3 4 5	ARBITRATION Q I'm going to want to show you let's go to Exhibit 12. Do you have it? A I do.
2 3 4 5 6	ARBITRATION Actuaries is? A I'm not familiar with that phrase. Q And I think you've already answered	2 3 4	ARBITRATION Q I'm going to want to show you let's go to Exhibit 12. Do you have it?
2 3 4 5 6 7	ARBITRATION Actuaries is? A I'm not familiar with that phrase. Q And I think you've already answered you're not familiar with this note either. A Correct. Q Thank you.	2 3 4 5 6 7	ARBITRATION Q I'm going to want to show you let's go to Exhibit 12. Do you have it? A I do. Q Can you tell me what this is? A It appears to be the 2012 Form 5500
2 3 4 5 6 7 8	ARBITRATION Actuaries is? A I'm not familiar with that phrase. Q And I think you've already answered you're not familiar with this note either. A Correct. Q Thank you. In your view, could the narrowest	2 3 4 5 6 7 8	ARBITRATION Q I'm going to want to show you let's go to Exhibit 12. Do you have it? A I do. Q Can you tell me what this is? A It appears to be the 2012 Form 5500 for the Consolidated Retirement Fund.
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	Page 393		Page 395
1	ARBITRATION	1	ARBITRATION
2	this fund as of December 31, 2012?	2	discount rate for calculating withdrawal
3	A I believe I was, but maybe I can	3	liability?
4	just check.	4	A On this particular fund?
5	Q Sure. Go ahead.	5	Q In this particular fund.
6	A Yes, I signed the Schedule MB.	6	A I do believe let's see, this was
7	Q What was the interest assumption	7	2012, so this was after the point where we
8	you used for the ongoing funding of this	8	talked about earlier today.
9	plan?	9	So I do believe I was using a lower
10		10	withdrawal liability interest rate
11	A That would be shown on 6(b) of	11	assumption.
12	Page 3 of the Schedule MB and that shows	12	Q Let's turn to an unnumbered page.
13	7.5 percent.	13	But it's a Schedule MB, Line 11, Addendum,
14	Q And that's the same interest	14	
15	assumption that Segal actuary used for the	15	it appears.
16	portfolio for the NMDU plan, correct?	16	ARBITRATOR IRVINGS: I'm sorry?
17	A Correct. Although there is a	17	What document are you looking at?
18	difference because Segal uses an expense	18	MR. RICHMAN: Same document.
19	load on top of that. This rate is net of	19	MR. MILLER: It's the page that
20	all plan expenses.	20	follows Page 24 on the Supplemental
21	So this 7.5 percent rate is truly a	21	Schedule.
22	higher rate and closer to 8 percent.	22	A The first page of Schedule MB.
23	If you are comparing apples and	23	Q No. It's the page after what we
24	apples.	24	were just looking at, the asset allocation.
25	Q And so you think it's about	25	A There may be more than one version.
23	8 percent if you put	25	Q There is more than one version.
	Page 394		Page 396
1	_	1	
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION A I don't remember. I know it's		
2	ARBITRATION A I don't remember. I know it's higher than 7.5.	2	ARBITRATION There is a financial report.
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2 3 4	ARBITRATION A I don't remember. I know it's higher than 7.5. Q But you don't remember? A I don't, no. Q You would agree, would you not,	2 3 4	ARBITRATION There is a financial report. MR. MILLER: Here it is. Talks about interest rates.
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Page 397 Page 399 1 1 **ARBITRATION ARBITRATION** 2 2 the enrolled actuary for the CRF? question. 3 3 A At Buck, I think it was Robin I'm sorry. I must have missed it. 4 4 And the simple question is that you Zlotowitz. 5 5 changed the rate before there was an actual O Did you discuss with Ms. Zlotowitz 6 6 the changing of the interest rate used to change in the asset allocation? 7 7 value liability for withdrawal liability Correct. 8 8 purposes from 6 to 5.5 percent? Thank you. \mathbf{O} 9 9 I don't remember. And with whom did you have this A 10 10 O And now, as I understood your discussion? 11 11 A I believe -- it was quite a while testimony on direct, you changed this 12 12 because the trustees had indicated to you ago, but I believe it was with three of the 13 13 trustees at a meeting with Amalgamated Bank that there might be a change in the 14 14 investment allocation, correct? and could have been others, but I have one 15 15 What I indicated was that if UNITE particular discussion that comes to mind. 16 16 HERE and another large employer were to O Did you ever have a discussion 17 17 about this or hear a discussion about this withdraw from the fund, the trustees 18 18 with the investment consultant being indicated that they would be changing the 19 19 investment mix of the fund because they no present? 20 longer had the deep pockets and were 20 No. He wouldn't have been involved 21 21 concerned about their own benefit security. in these conversations. 22 22 So I think your testimony before on O He wouldn't have been involved in a 23 23 direct was that the trustees were seriously conversation about a change of the asset 24 considering changing the asset allocation; 24 allocation? 25 25 is that correct? A He wasn't at the meeting. And, in Page 398 Page 400 1 **ARBITRATION** 1 ARBITRATION 2 A Yes. And we had a discussion about 2 fact, the actual change never occurred. 3 3 it that if there were major employers There was never a withdrawal that would have 4 4 leaving the fund, they were concerned, it brought him into this to actually talk about 5 5 was their own benefits here -making changes to the investment allocation. 6 But you changed it before there was 6 Q Okay. And was there an act, a 7 7 actually a major employer leaving the fund. decision by the board of trustees of the CRF 8 8 Yes, an anticipation that if, if, to change the asset allocation of the fund? 9 9 an employer -- they are only talking about A No. Like I said, it was a: If 10 changing the investment mix if there was a 10 this occurs, this is what we are very likely 11 11 major withdrawal. going to do. This is our anticipation. But 12 If there was not a major withdraw, 12 if it doesn't occur, we are not going to 13 13 they were not going to change their change it. 14 investment portfolio. 14 How many trustees were there on the O 15 So for regular funding where that 15 CRF? 16 is not anticipated, we did not change the 16 A Oh, I'm going to say ten, maybe 17 investment return assumption for that 17 more than ten. 18 purpose. 18 O And you had this discussion with 19 19 For withdrawal liability which three of them? 20 would have necessarily been contingent on a 20 Three very key ones. The key Α 21 withdrawal incurring, in anticipation if 21 decision-makers. 22 that situation occurred, then the funding 22 Okay. How many discussions were Q 23 rate, the ongoing funding rate would be 23 there? 24 reduced later. 24 At least one. There may have been A 25 25 But I actually asked you a simple others but at least one.

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	Page 401		Page 403
1	ARBITRATION	1	ARBITRATION
2	Q How long did this discussion take	2	MR. RICHMAN: Okay.
3	place?	3	BY MR. RICHMAN:
4	A I don't remember. Ten minutes. I	4	Q Did the employer that was
5	don't know.	5	considering withdrawing, that was whom?
6	Q So on the basis of that discussion,	6	A UNITE HERE. All capital letters.
7	you determined that 6 percent would be the	7	UNITE HERE.
8	appropriate rate for withdrawal liability	8	Q And did they actually withdraw?
9	purposes?	9	A Not while I was working on the
10	A I determined a rate. I set it down	10	account.
11	in a memo to the trustees saying, look, this	11	Q Okay. And while when was it
12	is what you've told me. Based on this	12	that you last stopped working on the
13	information, this is how I'm changing the	13	account?
14	investment return assumption for withdrawal	14	A I think it was around July of 2013,
15	liability purposes, assuming this many	15	somewhere in that area.
16	employers withdraw and they change the mix	16	Q And in July of 2013, was there
17	to a fixed-income portfolio on a bigger	17	still a threat that UNITE HERE was going to
18	portion of the fund. And this is how I came	18	withdraw from the Fund?
19	up with the number.	19	A Very likely. I don't know, but
20	So it wasn't just a conversation.	20	they had never withdrawn their threat.
21	I put it back in writing to the trustees,	21	Let's put it that way.
22	this is what you told me, this is why I did	22	Q Okay.
23	it.	23	So in your mind that was their
24	Q Okay. I understand you did a memo.	24	threat to withdraw from the fund still
25	A Yes.	25	existed in July of 2013?
	Page 402		Page 404
1	_	1	
1 2	ARBITRATION	1 2	ARBITRATION
1 2 3	ARBITRATION Q And you put it back to the		ARBITRATION A Very possibly, but, remember, I
2	ARBITRATION Q And you put it back to the trustees.	2	ARBITRATION A Very possibly, but, remember, I wasn't setting the assumptions at that
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2 3 4 5	ARBITRATION Q And you put it back to the trustees. Did the trustees ever tell you what the investment mix would be if there were a withdrawal?	2 3 4 5	ARBITRATION A Very possibly, but, remember, I wasn't setting the assumptions at that point. When I was setting the assumptions in 2012, it was certainly out there. Q And did you ever have a
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2 3 4 5 6 7 8	ARBITRATION Q And you put it back to the trustees. Did the trustees ever tell you what the investment mix would be if there were a withdrawal? A We didn't get exact percentages or anything of that sort. It was sort of we were going to go to a very conservative	2 3 4 5 6 7 8	ARBITRATION A Very possibly, but, remember, I wasn't setting the assumptions at that point. When I was setting the assumptions in 2012, it was certainly out there. Q And did you ever have a conversation with anybody from Buck that if
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Page 405	5 Page 407
1 ARBITRATION	1 ARBITRATION
using that assumption correct?	² Q Let's go to that.
A Correct. But just like any other	A That is Page 1 under Section 1.2.
assumption, just because it didn't happen,	4 Q All right.
doesn't mean it was wrong. Doesn't mean it	
6 was a wrong assumption.	last paragraph on Page 1, "This standard
Q Let's go back to ASOP 27 which is	does not apply to the selection of an
8 Exhibit 10.	8 assumption where the actuary is precluded
9 A Okay.	9 from exercising independent judgment by
Q Let's look at 3.6 on Page 5.	applicable law, regulation or other binding
11 A Yes, I have it.	authority, i.e., when a specific assumption
Q Now, as I understood and correct	is mandated or when only a specified range
me if I'm wrong that you thought pursuan	
to 3.6 that there were two exceptions for	Then it goes on to show an example.
the discount rate being selected that is	Q Isn't that simply saying that
different than the investment return	16 ASOP 27 doesn't apply?
assumption?	A Meaning in the same sense.
A There are two exceptions shown	The same example they're showing
there, yes.	for ASOP 27 is essentially that same type of
Q And in your reading of 3.6, is it	thing. Yes, it is paraphrasing to some
your view that 3.6 is intended to have only	21 extent.
two exceptions?	It is paraphrasing this entire
A 3.6 can't necessarily be read	ASOP 27, but you have to read this thing as
entirely on its own. This whole statement	an actuary and in terms of how it was
works together and there are other sections	intended. And the logic of it is, of
Page 400	6 Page 408
¹ ARBITRATION	1 ARBITRATION
ARBITRATION where they specify where it wouldn't apply.	ARBITRATION course, if you are required by an outside
ARBITRATION where they specify where it wouldn't apply. But when you read these sections	ARBITRATION course, if you are required by an outside standard, whether it be accounting standard
ARBITRATION where they specify where it wouldn't apply. But when you read these sections together, it's clear that the exceptions are	ARBITRATION course, if you are required by an outside standard, whether it be accounting standard or a government entity, to do something
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	Page 409		Page 411
1	ARBITRATION	1	ARBITRATION
2	A I'm just saying, there is nothing	2	characterizing them.
3	else that it could mean.	3	Either way, they are going into the
4		4	minimum funding standard account. Either
5	Q So you can't imagine anything else	5	
6	that it could mean?	6	way, they're going into one pool of assets.
	A Not if you are trying to determine		Either way, those assets are going to pay
7	the experience under the plan.	7	one set of benefits under the plan.
8	I just don't want you to parse one	8	There's not one pool over here for
9	piece out that doesn't belong with the	9	withdrawal liability payments and another
10	other. That's all.	10	pool over here for regular funding payments.
11	Q Take a look at 3.3 of the ASOP 27.	11	They all determine minimum funding.
12	That's on Page 4.	12	Q But the withdrawal liability's
13	A Yup.	13	actually fixed at the time that the employer
14	Q And it talks about the	14	withdraws from a fund, correct?
15	consideration the actuary should consider	15	A Yes. But, again, it doesn't change
16	when "identifying which types of economic	16	the dollars coming in and where they go.
17	assumptions to use for a specific	17	Q I just would wish you would answer
18	measurement and when selecting those	18	the question.
19	economic assumptions that will be used."	19	ARBITRATOR IRVINGS: Yeah, it's
20	And the first one is the purpose	20	going to be faster if you just
21	and nature of the measurement.	21	MR. RICHMAN: Or we'll be here
22		22	three days.
23	Can you tell me how that works with 3.6?	23	ž
24		24	MR. MILLER: Speaking of that,
25	A Yeah. They're saying depending on	25	it is 1:00
23	the purpose and nature, you might use	25	MR. RICHMAN: Not a good time
	Page 410		Page 412
1	Page 410 ARBITRATION	1	Page 412 ARBITRATION
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION something different.		ARBITRATION for a break, but I'll look for a
2	ARBITRATION something different. But, remember, the purpose and	2	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could
2	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation	2	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll
2 3 4	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation is essentially no different than the purpose	2 3 4	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll get there.
2 3 4 5	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation is essentially no different than the purpose and nature of the regular minimum funding	2 3 4 5	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll get there. BY MR. RICHMAN:
2 3 4 5	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation is essentially no different than the purpose and nature of the regular minimum funding requirements. They are essentially looking	2 3 4 5 6	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll get there. BY MR. RICHMAN: Q So what I just asked you is the
2 3 4 5 6 7	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation is essentially no different than the purpose and nature of the regular minimum funding requirements. They are essentially looking at the present value of basically the same	2 3 4 5 6 7	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll get there. BY MR. RICHMAN: Q So what I just asked you is the withdrawal liability is actually fixed for
2 3 4 5 6 7 8	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation is essentially no different than the purpose and nature of the regular minimum funding requirements. They are essentially looking at the present value of basically the same benefits. Basically, all of them are going	2 3 4 5 6 7 8	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll get there. BY MR. RICHMAN: Q So what I just asked you is the withdrawal liability is actually fixed for an employer who withdraws as of a certain
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation is essentially no different than the purpose and nature of the regular minimum funding requirements. They are essentially looking at the present value of basically the same benefits. Basically, all of them are going to be paid out of the same trust fund. They are going to be vested under one asset policy. So, and this doesn't give you a rationale for using a different rate for withdrawal liability versus minimum funding because they aren't different.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll get there. BY MR. RICHMAN: Q So what I just asked you is the withdrawal liability is actually fixed for an employer who withdraws as of a certain date, correct? A Correct. Q And the withdrawal liability is paid over a certain period of time? A Correct. Q And that calculation is done under the statute for how long a period of time?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION something different. But, remember, the purpose and nature of a withdrawal liability calculation is essentially no different than the purpose and nature of the regular minimum funding requirements. They are essentially looking at the present value of basically the same benefits. Basically, all of them are going to be paid out of the same trust fund. They are going to be vested under one asset policy. So, and this doesn't give you a rationale for using a different rate for withdrawal liability versus minimum funding because they aren't different. Q So they are not different. So isn't withdrawal liability only assessed against an employer that withdraws? A Yes. Q And that's not different than the employer continuing to participate in the pension fund? A It's different only in a sense of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION for a break, but I'll look for a break hopefully soon. And if I could be provided some assistance, we'll get there. BY MR. RICHMAN: Q So what I just asked you is the withdrawal liability is actually fixed for an employer who withdraws as of a certain date, correct? A Correct. Q And the withdrawal liability is paid over a certain period of time? A Correct. Q And that calculation is done under the statute for how long a period of time? A For up to 20. Q Up to 20 years. So they are not in the pension plan to the extent that they have any risk associated with the performance of the investment portfolio, correct?
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1	ARBITRATION	1	ARBITRATION
2	break. I'm not finished. But let's	2	participants in the plan, eventually the old
3	eat lunch.	3	ones would stop incurring benefits, retire,
4	(A luncheon recess was taken at	4	die off and the last benefits would be paid.
5	1:05 p.m. through 1:54 p.m.)	5	So if you are having fewer and
6	MR. MILLER: Back on the	6	fewer participants, then over time, your
7	record.	7	horizon of the plan will slowly start to
8	CONTINUED CROSS EXAMINATION BY MR. RICHMAN:	8	decline.
9	Q We have had testimony previously in	9	Q And would this affect the risks
10	this arbitration, in particular from a New	10	associated with the plan doing well or not
11	York Times witness, particularly about the	11	doing well?
12	decline in the industry in which the Fund's	12	A Yeah. I think we've discussed this
13	participants are employed.	13	earlier and it's been discussed quite a bit
14	And he had also indicated that he	14	that with less participants and less
15	did not expect that that decline was going	15 16	contributions coming in, that the risk of an
16 17	to be reversed.	17	aggressive portfolio is somewhat higher
18	And so assuming he is correct in	18	because in the event that the plan does not
19	his judgment, how would that affect the	19	do as well as anticipated, there are fewer
20	pension plan, this pension plan in this	20	bodies over which to amortize that difference.
21	suit?	21	And, likewise, if the plan does
22	A How would that affect this pension plan?	22	better than expected, there would be a lot
23	Q Yes.	23	less bodies to amortize that decline over.
24	A Well, there would be lower	24	Q When you talk about "less bodies to
25	contributions coming in presumably, unless	25	amortize," can you explain what you mean?
	controlations coming in presumatory, timess		amorezo, can you explain what you mean.
	Page 414		Page 416
1	ARBITRATION	1	ARBITRATION
2	rates were correspondingly increased.	2	A Per participant.
3	It would slightly reduce the	3	So, in other words, if you need
4	ongoing obligations to the Fund versus what	4	\$10 million you need to fund a
5	would otherwise would happen.	5	10-million-dollar liability and you've got
6	And there would be less	6	10 million lives, well, that's not a whole
7	contributions and assets. There would also	7	lot of money. Well, if you have only ten
8	be probably less liabilities in the future.	8	lives, that's only a million dollars each.
10	Q And the plan would become more	10	Q I thought I was sure before but I'm
11	mature?	11	not sure now about what you are giving an
12	A I think you would often use the word "more mature." I think the retiree or	12	opinion on. And so let me ask you: Do you have
13	inactive population relative to the active	13	an opinion on whether the assumptions used
14	population would probably increase, and that	14	to calculate The Times' withdrawal liability
15	is often called a more mature plan.	15	were unreasonable in the aggregate?
10			
16		16	MR MILLER: Objection
	Q What are the facts of having a more	16 17	MR. MILLER: Objection. MR RICHMAN: This is
16	Q What are the facts of having a more mature plan?		MR. RICHMAN: This is
16 17	Q What are the facts of having a more mature plan?	17	MR. RICHMAN: This is cross-examination. Thank you.
16 17 18	Q What are the facts of having a more mature plan?A There's less contributions coming	17 18	MR. RICHMAN: This is cross-examination. Thank you. BY MR. RICHMAN:
16 17 18 19	Q What are the facts of having a more mature plan? A There's less contributions coming in relative to the size of the assets typically. And at some point the plan would have a somewhat shorter time horizon.	17 18 19	MR. RICHMAN: This is cross-examination. Thank you.
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16 17 18 19 20 21 22 23	Q What are the facts of having a more mature plan? A There's less contributions coming in relative to the size of the assets typically. And at some point the plan would have a somewhat shorter time horizon. Q And what does that mean, have a shorter time horizon?	17 18 19 20 21 22 23	MR. RICHMAN: This is cross-examination. Thank you. BY MR. RICHMAN: Q Do you have an opinion? A Yes. Q Now, how could you opine that the assumptions I'm sorry. And what is that

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8 assumptions used to calculate The Times' 8 Q I know you're not saying it is	
aggregate without knowing what interest rate 10 Q And so if that rate were 6 and	la l
would produce the same withdrawal liability 11 half percent, how do you know that	
for The Times? 12 half percent is not a reasonable rate	
A For reasons that I just stated 13 for the Fund in calculating The Time	
earlier in the day. 14 withdrawal liability?	CS
All of the other assumptions are 15 A Because the actuary has certified and the second	fied
reasonable. We know that the 7 and a half 16 that 7.5 percent is her best estimate	
return is reasonable, so if you are using a 17 So 6 and a half percent can't be reasonable.	
much lower than 7 and a half percent return 18 if that's the assumption.	onaoic
which is going to have a substantial impact 19 Q So you are saying that 6 and	a half
on the liabilities, a 33 percent increase in 20 percent is not within the range of th	
the withdrawal liability, you've got no 21 a half percent that the Fund actuary	
offsetting assumption factor. That's 22 A I didn't say that. I said the	uiu!
23 unreasonable. 23 unreasonable. 23 actuary picked a number, as she mu	ct And
Q But what I understood your 24 once she picks it, you can't have an	
Q But what I understood your once she picks it, you can't have an	
testimony before is that you have not 25 rate that represents the same number	i. The
Page 418	ge 420
¹ ARBITRATION ¹ ARBITRATION	
developed a firm view as to what interest 2 number is 7 and a half. There can't	1 1
developed a firm view as to what interest 2 number is 7 and a half. There can't	be
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1	ARBITRATION	1	ARBITRATION
2	MR. MILLER: Just take a minute	2	address, for the record.
3	or two. Everyone should stay here.	3	A My name is Rosana Egan. And I live
4	(Pause.)	4	in Lido Beach, New York.
5	MR. MILLER: I just have a	5	Q Where are you currently employed?
6	couple brief follow-up questions.	6	A The Segal Company.
7	REDIRECT EXAMINATION BY MR. MILLER:	7	Q And how long have you been employed
8	Q I think you had testified that the	8	at the Segal Company?
9	actuary who succeeded you on the	9	A Since 1982.
10	Consolidated Retirement Fund was Robin	10	Q And, generally, what are your
11	Zlotowitz; is that correct?	11	responsibilities at the Segal Company?
12	A That is correct.	12	A I'm an actuary at the Segal
13	Q Does she continue to be the	13	Company.
14	actuary?	14	Q Are you an enrolled actuary?
15	A No, I don't believe so.	15	A Yes, I am.
16	Q And do you know who the	16	Q And what does it mean to be an
17	Consolidated Retirement Fund has retained as	17	enrolled actuary?
18	the successor actuary?	18	A It means that you can prepare
19	A I'm not a hundred percent certain,	19	certifications and governmental filings for
20	but I do believe that Horizon Actuarial	20	a pension plan.
21	Services was hired, but I wouldn't swear to	21	Q As an enrolled actuary, do you
22	that.	22	develop actuarial assumptions that a pension
23	MR. MILLER: No further	23	plan uses?
24	questions.	24	A Yes.
25	RECROSS-EXAMINATION BY MR. RICHMAN:	25	Q Do you develop those actuarial
	Page 422		Page 424
1	Page 422 ARBITRATION	1	Page 424 ARBITRATION
1 2		1 2	
	ARBITRATION		ARBITRATION
2	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF?	2 3 4	ARBITRATION assumptions in connection with the pension
2	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand.	2 3	ARBITRATION assumptions in connection with the pension plan's funding obligations?
2 3 4	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed	2 3 4	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice
2 3 4 5 6 7	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate	2 3 4 5 6 7	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on?
2 3 4 5 6 7 8	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability?	2 3 4 5 6 7 8	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on? A Multiemployer defined benefit
2 3 4 5 6 7	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability? A On their Consolidated Retirement	2 3 4 5 6 7	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on?
2 3 4 5 6 7 8 9	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability? A On their Consolidated Retirement Fund?	2 3 4 5 6 7 8 9	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on? A Multiemployer defined benefit plans. Q And for how long has that been the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability? A On their Consolidated Retirement Fund? Q Yes. A I do not know. MR. RICHMAN: That's it. So now we have a little dilemma. MR. MILLER: Yes. Off the record. (Pause.) ROSANA EGAN, having been first duly sworn by Arbitrator Irvings, was examined and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on? A Multiemployer defined benefit plans. Q And for how long has that been the case? A For myself? Q Yes. A Since I've been employed at the Segal Company. Or since I've been an enrolled actuary. Q And how long have you been an enrolled actuary? A Since approximately 1990. Q And what does an enrolled actuary
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability? A On their Consolidated Retirement Fund? Q Yes. A I do not know. MR. RICHMAN: That's it. So now we have a little dilemma. MR. MILLER: Yes. Off the record. (Pause.) ROSANA EGAN, having been first duly sworn by Arbitrator Irvings, was examined and testified as follows:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on? A Multiemployer defined benefit plans. Q And for how long has that been the case? A For myself? Q Yes. A Since I've been employed at the Segal Company. Or since I've been an enrolled actuary. Q And how long have you been an enrolled actuary? A Since approximately 1990. Q And what does an enrolled actuary to a multiemployer pension plan do?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability? A On their Consolidated Retirement Fund? Q Yes. A I do not know. MR. RICHMAN: That's it. So now we have a little dilemma. MR. MILLER: Yes. Off the record. (Pause.) ROSANA EGAN, having been first duly sworn by Arbitrator Irvings, was examined and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on? A Multiemployer defined benefit plans. Q And for how long has that been the case? A For myself? Q Yes. A Since I've been employed at the Segal Company. Or since I've been an enrolled actuary. Q And how long have you been an enrolled actuary? A Since approximately 1990. Q And what does an enrolled actuary to a multiemployer pension plan do? A That's a kind of broad question.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability? A On their Consolidated Retirement Fund? Q Yes. A I do not know. MR. RICHMAN: That's it. So now we have a little dilemma. MR. MILLER: Yes. Off the record. (Pause.) ROSANA EGAN, having been first duly sworn by Arbitrator Irvings, was examined and testified as follows: DIRECT EXAMINATION BY MR. MILLER: Q Good afternoon, Ms. Egan. Can you please state your full name	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on? A Multiemployer defined benefit plans. Q And for how long has that been the case? A For myself? Q Yes. A Since I've been employed at the Segal Company. Or since I've been an enrolled actuary. Q And how long have you been an enrolled actuary? A Since approximately 1990. Q And what does an enrolled actuary to a multiemployer pension plan do? A That's a kind of broad question. We prepare our annual valuations of the status, the funding status of a plan,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION Q Do you know who at Horizon Actuarial Services is providing services to the CRF? A I do not offhand. Q Do you know whether they've changed the interest assumption used to calculate withdrawal liability? A On their Consolidated Retirement Fund? Q Yes. A I do not know. MR. RICHMAN: That's it. So now we have a little dilemma. MR. MILLER: Yes. Off the record. (Pause.) ROSANA EGAN, having been first duly sworn by Arbitrator Irvings, was examined and testified as follows: DIRECT EXAMINATION BY MR. MILLER: Q Good afternoon, Ms. Egan.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION assumptions in connection with the pension plan's funding obligations? A Yes. Q And as an enrolled actuary, what type of pension plan does your practice primarily focus on? A Multiemployer defined benefit plans. Q And for how long has that been the case? A For myself? Q Yes. A Since I've been employed at the Segal Company. Or since I've been an enrolled actuary. Q And how long have you been an enrolled actuary? A Since approximately 1990. Q And what does an enrolled actuary to a multiemployer pension plan do? A That's a kind of broad question. We prepare our annual valuations of the

	Page 425		Page 427
1	ARBITRATION	1	ARBITRATION
2	governmental filings that go with that.	2	you currently serve as the enrolled actuary?
3	Q And you develop the actuarial	3	A Approximately 20.
4	assumptions in conjunction with those	4	Q Over the course of your career,
5	valuations and filings?	5	approximately how many multiemployer plans
6	A Yes.	6	have you served as an enrolled actuary to?
7	Q Are you familiar with the term	7	A About maybe 50.
8		8	
9	"endangered status"? A Yes.	9	
10		10	A Approximately, give or take.
11	Q What does the term "endangered	11	Q Are you the enrolled actuary for
	status" mean in the context of multiemployer	12	the NMDU Pension Fund?
12	pension plans?		A Yes.
13	A Since the passing of the Pension	13	Q And how long have you been the
14	Protection Act of 2006, the law required	14	Fund's enrolled actuary?
15	that annually that the status as to a	15	A Since about the mid '90s.
16	plan as to what zone they created	16	Q Is it fair to say approximately
17	three zones that a defined benefit plan	17	1995?
18	could be in.	18	A Approximately, give or take. I
19	And a certification needs to be	19	don't remember exactly.
20	done annually to determine what status a	20	Q Does anybody else from the Segal
21	plan is, and endangered status is one of	21	firm work with you in conjunction with your
22	those statuses.	22	engagement by the Pension Fund here?
23	Q And let me just quickly get to the	23	A Yes.
24	heart of the question that I was going to	24	Q Can you identify those for me?
25	ask.	25	A John Urbank. And I have a team of
	Page 426		Page 428
1	Page 426 ARBITRATION	1	Page 428 ARBITRATION
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION In connection with multiemployer		ARBITRATION actuaries that has changed over the years
2	ARBITRATION In connection with multiemployer pension plans that are in endangered status,	2	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank
2	ARBITRATION In connection with multiemployer pension plans that are in endangered status, what kind of services do you perform as an	2	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank Santaciera (ph.).
2 3 4	ARBITRATION In connection with multiemployer pension plans that are in endangered status, what kind of services do you perform as an enrolled actuary?	2 3 4	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank Santaciera (ph.). Q And what is Mr. Urbank's role in
2 3 4 5	ARBITRATION In connection with multiemployer pension plans that are in endangered status, what kind of services do you perform as an enrolled actuary? A We first have to certify that they	2 3 4 5	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank Santaciera (ph.). Q And what is Mr. Urbank's role in connection with Segal's engagement by the
2 3 4 5 6	ARBITRATION In connection with multiemployer pension plans that are in endangered status, what kind of services do you perform as an enrolled actuary? A We first have to certify that they are in endangered status, and then we assist	2 3 4 5 6	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank Santaciera (ph.). Q And what is Mr. Urbank's role in connection with Segal's engagement by the NMDU Fund here?
2 3 4 5 6 7	ARBITRATION In connection with multiemployer pension plans that are in endangered status, what kind of services do you perform as an enrolled actuary? A We first have to certify that they are in endangered status, and then we assist the trustees in their development of their	2 3 4 5 6 7	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank Santaciera (ph.). Q And what is Mr. Urbank's role in connection with Segal's engagement by the NMDU Fund here? A Mr. Urbank's role is the client
2 3 4 5 6 7 8	ARBITRATION In connection with multiemployer pension plans that are in endangered status, what kind of services do you perform as an enrolled actuary? A We first have to certify that they are in endangered status, and then we assist the trustees in their development of their funding improvement plan that needs to be	2 3 4 5 6 7 8	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank Santaciera (ph.). Q And what is Mr. Urbank's role in connection with Segal's engagement by the NMDU Fund here? A Mr. Urbank's role is the client relationship manager.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION In connection with multiemployer pension plans that are in endangered status, what kind of services do you perform as an enrolled actuary? A We first have to certify that they are in endangered status, and then we assist the trustees in their development of their funding improvement plan that needs to be developed. Q And can you elaborate on the types of assistance that you provide to a multiemployer plan in helping and develop this funding improvement policy? A We might provide projections as to their future status to help them come up with what remedies or schedules they need to develop to meet the requirements of a funding improvement plan. Q Do you help them with the projections about future contribution amounts?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION actuaries that has changed over the years but is currently James Yon (ph.) and Frank Santaciera (ph.). Q And what is Mr. Urbank's role in connection with Segal's engagement by the NMDU Fund here? A Mr. Urbank's role is the client relationship manager. Q And what does the client relationship manager do? A He is the person that deals mostly with the client and go to meetings and maybe will take whatever we do in-house and bring it to the client. Q Do you know whether Mr. Urbank routinely attends the trustee meetings of this fund, the NMDU Fund? A My understanding is that he does routinely attend. I don't know that he's made every single meeting, but Q Okay. And do you attend meetings

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	ARBITRATION	2	ARBITRATION
2	type of subject matter that would be	3	questions about the compensation for the
3	addressed at a meeting that would cause you		participants in the NMDU Fund. Okay.
4	to attend? And by "meeting," I mean a	4	The Fund covers newspaper
5	meeting of the NMDU Fund.	5	deliverers; is that correct?
6	A One example would be when we've	6	A That's my understanding.
7	completed an actuarial valuation report, I	7	Q And is it correct that these
8	may go and present it or go over the report.	8	newspaper deliverers are generally
9	Or if we've prepared some projections, I may	9	compensated for shifts worked?
10	be there to go over the projections.	10	A That they're compensated that's
11	Q Who is the current Fund	11	my understanding.
12	administrator?	12	Q Do you know if the participants in
13	A Bob Costello.	13	this Fund also received compensation and pay
14	Q How long has Mr. Costello been in	14	while out on Workers' Compensation?
15	that post?	15	A I have no idea.
16	A Approximately a year, give or take.	16	Q Do you know if the workers in this
17	Q Who was the prior administrator?	17	Fund also receive holiday pay?
18	A Mr. Murray Schwartz.	18	A I don't know what they receive as
19	Q And approximately how long was	19	far as that holiday pay.
20	Mr. Schwartz in the post?	20	Q In preparing actuarial valuation
21	A A long time. Trying to think. I	21	reports for this Fund, do you receive
22	think since I've been on the Fund. I don't	22	information from the Fund respecting
23	remember if there was someone before him	23	compensation of the employee participants?
24		24	
25	maybe, but it's a long time.	25	A Could you ask that question again?
25	Q And just to recap, you've been the	23	Q Sure.
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1	-	1	
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION enrolled actuary for this Fund since		ARBITRATION In preparing actuarial valuation
2	ARBITRATION enrolled actuary for this Fund since approximately 1995?	2	ARBITRATION In preparing actuarial valuation reports for this Fund, do you receive
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2 3 4 5 6	ARBITRATION enrolled actuary for this Fund since approximately 1995? A The mid '90s, yes. Q And was Mr. Schwartz serving as the Fund administrator when you became the enrolled actuary? A That's what I'm not exactly sure	2 3 4 5 6	ARBITRATION In preparing actuarial valuation reports for this Fund, do you receive information from the Fund, the Fund office respecting the compensation of the employee participants? A Not no, not that I am aware of. Q Okay.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION enrolled actuary for this Fund since approximately 1995? A The mid '90s, yes. Q And was Mr. Schwartz serving as the Fund administrator when you became the enrolled actuary? A That's what I'm not exactly sure of. It could have been someone else and then him, but I'm not sure exactly of when he started. Q Do you know the reasons for Mr. Schwartz no longer serving as the Fund administrator? A My understanding is they were going to a third-party administrator and closing down the Fund office. Q Was Mr. Schwartz terminated? A I would assume so, yes. MR. RICHMAN: I hope we are not	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION In preparing actuarial valuation reports for this Fund, do you receive information from the Fund, the Fund office respecting the compensation of the employee participants? A Not no, not that I am aware of. Q Okay. A Not to prepare a valuation report. Q Do you receive compensation information about the participants in this Fund in connection with preparation of or estimates of withdrawal liability? A What do you mean by "compensation information"? Q The compensation information strike that. In connection, for example, with preparing an estimate of withdrawal liability of an employer, would you receive
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION enrolled actuary for this Fund since approximately 1995? A The mid '90s, yes. Q And was Mr. Schwartz serving as the Fund administrator when you became the enrolled actuary? A That's what I'm not exactly sure of. It could have been someone else and then him, but I'm not sure exactly of when he started. Q Do you know the reasons for Mr. Schwartz no longer serving as the Fund administrator? A My understanding is they were going to a third-party administrator and closing down the Fund office. Q Was Mr. Schwartz terminated? A I would assume so, yes. MR. RICHMAN: I hope we are not going to dwell on this topic. BY MR. MILLER:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION In preparing actuarial valuation reports for this Fund, do you receive information from the Fund, the Fund office respecting the compensation of the employee participants? A Not no, not that I am aware of. Q Okay. A Not to prepare a valuation report. Q Do you receive compensation information about the participants in this Fund in connection with preparation of or estimates of withdrawal liability? A What do you mean by "compensation information"? Q The compensation information strike that. In connection, for example, with preparing an estimate of withdrawal liability of an employer, would you receive from the Fund office information about the compensation of that employer's employees
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION enrolled actuary for this Fund since approximately 1995? A The mid '90s, yes. Q And was Mr. Schwartz serving as the Fund administrator when you became the enrolled actuary? A That's what I'm not exactly sure of. It could have been someone else and then him, but I'm not sure exactly of when he started. Q Do you know the reasons for Mr. Schwartz no longer serving as the Fund administrator? A My understanding is they were going to a third-party administrator and closing down the Fund office. Q Was Mr. Schwartz terminated? A I would assume so, yes. MR. RICHMAN: I hope we are not going to dwell on this topic. BY MR. MILLER: Q Let me talk for a moment about the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION In preparing actuarial valuation reports for this Fund, do you receive information from the Fund, the Fund office respecting the compensation of the employee participants? A Not no, not that I am aware of. Q Okay. A Not to prepare a valuation report. Q Do you receive compensation information about the participants in this Fund in connection with preparation of or estimates of withdrawal liability? A What do you mean by "compensation information"? Q The compensation information strike that. In connection, for example, with preparing an estimate of withdrawal liability of an employer, would you receive from the Fund office information about the compensation of that employer's employees who participate in the Fund?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION enrolled actuary for this Fund since approximately 1995? A The mid '90s, yes. Q And was Mr. Schwartz serving as the Fund administrator when you became the enrolled actuary? A That's what I'm not exactly sure of. It could have been someone else and then him, but I'm not sure exactly of when he started. Q Do you know the reasons for Mr. Schwartz no longer serving as the Fund administrator? A My understanding is they were going to a third-party administrator and closing down the Fund office. Q Was Mr. Schwartz terminated? A I would assume so, yes. MR. RICHMAN: I hope we are not going to dwell on this topic. BY MR. MILLER: Q Let me talk for a moment about the NMDU employees who participated in this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION In preparing actuarial valuation reports for this Fund, do you receive information from the Fund, the Fund office respecting the compensation of the employee participants? A Not no, not that I am aware of. Q Okay. A Not to prepare a valuation report. Q Do you receive compensation information about the participants in this Fund in connection with preparation of or estimates of withdrawal liability? A What do you mean by "compensation information"? Q The compensation information strike that. In connection, for example, with preparing an estimate of withdrawal liability of an employer, would you receive from the Fund office information about the compensation of that employer's employees who participate in the Fund? A Compensation? Not typically.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION enrolled actuary for this Fund since approximately 1995? A The mid '90s, yes. Q And was Mr. Schwartz serving as the Fund administrator when you became the enrolled actuary? A That's what I'm not exactly sure of. It could have been someone else and then him, but I'm not sure exactly of when he started. Q Do you know the reasons for Mr. Schwartz no longer serving as the Fund administrator? A My understanding is they were going to a third-party administrator and closing down the Fund office. Q Was Mr. Schwartz terminated? A I would assume so, yes. MR. RICHMAN: I hope we are not going to dwell on this topic. BY MR. MILLER: Q Let me talk for a moment about the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION In preparing actuarial valuation reports for this Fund, do you receive information from the Fund, the Fund office respecting the compensation of the employee participants? A Not no, not that I am aware of. Q Okay. A Not to prepare a valuation report. Q Do you receive compensation information about the participants in this Fund in connection with preparation of or estimates of withdrawal liability? A What do you mean by "compensation information"? Q The compensation information strike that. In connection, for example, with preparing an estimate of withdrawal liability of an employer, would you receive from the Fund office information about the compensation of that employer's employees who participate in the Fund?

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1	ARBITRATION	1	ARBITRATION
2	for one second.	2	They have different titles.
3	Can we go off the record for one	3	Their role is to oversee the
4	second.	4	operations of the specific funds, whether
5	(Discussion off the record.)	5	they be pension, welfare or annuity.
6	JOHN URBANK,	6	Responsible for the day-to-day operations.
7	having been first duly sworn by	7	We deal with them in terms of
8	Arbitrator Irvings, was examined and	8	providing our services and consulting.
9	testified as follows:	9	Q For how long have you been a
10	DIRECT EXAMINATION BY MR. RICHMAN:	10	benefits consultant at Segal?
11	Q How are you today, Mr. Urbank?	11	A About 20 years.
12	A Fine, thank you.	12	Q And before you were a benefits
13	Q You are currently employed?	13	consultant, what was your position at Segal?
14	A Yes.	14	A I worked in the Health Group
15	Q By whom?	15	underwriting area at first as an analyst,
16	A The Segal Consulting Company.	16	then moved up to assistant manager in the
17	Q And for how long have you been	17	department.
18	employed by the Segal Company?	18	Q What types of services did the
19	A Thirty-four years.	19	Health Group underwrite
20	Q Thirty-four years?	20	A Health Benefits Underwriting
21	A Thirty-four years. I know it's	21	Services.
22	hard to believe.	22	Q Sorry. What services did they
23	Q That's good.	23	provide?
24	And what is currently your role at	24	A We provided our clients with
25	the Segal Company?	25	various services related to the health fund.
	Page 434		Page 436
1	_	1	Page 436 ARBITRATION
1 2	Page 434 ARBITRATION A I'm a benefits consultant and a	1 2	ARBITRATION
	ARBITRATION A I'm a benefits consultant and a		
2	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal	2	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance
2	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group.	2 3	ARBITRATION We do projections of their benefit plans.
2 3 4	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles	2 3 4	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded
2 3 4 5	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group.	2 3 4 5	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies.
2 3 4 5 6	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role.	2 3 4 5 6	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different
2 3 4 5 6 7	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits	2 3 4 5 6 7	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to
2 3 4 5 6 7 8	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager?	2 3 4 5 6 7 8	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding
2 3 4 5 6 7 8 9	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business,	2 3 4 5 6 7 8	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance
2 3 4 5 6 7 8 9	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and	2 3 4 5 6 7 8 9	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions,
2 3 4 5 6 7 8 9 10	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity.	2 3 4 5 6 7 8 9 10	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications.
2 3 4 5 6 7 8 9 10 11 12	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face	2 3 4 5 6 7 8 9 10 11 12	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that
2 3 4 5 6 7 8 9 10 11 12 13	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services	2 3 4 5 6 7 8 9 10 11 12 13	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group?
2 3 4 5 6 7 8 9 10 11 12 13 14	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services to them, actuarial, health benefits, pension	2 3 4 5 6 7 8 9 10 11 12 13 14	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group? A Approximately ten years.
2 3 4 5 6 7 8 9 10 11 12 13 14	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services to them, actuarial, health benefits, pension benefits to the client, which would	2 3 4 5 6 7 8 9 10 11 12 13 14 15	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group? A Approximately ten years. Q So I think at least four years.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services to them, actuarial, health benefits, pension	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group? A Approximately ten years. Q So I think at least four years. Did you have a position before
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services to them, actuarial, health benefits, pension benefits to the client, which would constitute usually the fund director, fund managers and the boards of trustees, and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group? A Approximately ten years. Q So I think at least four years. Did you have a position before being in that group at Segal?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services to them, actuarial, health benefits, pension benefits to the client, which would constitute usually the fund director, fund managers and the boards of trustees, and deal with the other professionals that are employed by the clients.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group? A Approximately ten years. Q So I think at least four years. Did you have a position before being in that group at Segal? A No. So it was more likely ten years in that capacity and 24 years in the consulting. Q As a benefits consultant?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services to them, actuarial, health benefits, pension benefits to the client, which would constitute usually the fund director, fund managers and the boards of trustees, and deal with the other professionals that are employed by the clients. Q When you refer to the fund director?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group? A Approximately ten years. Q So I think at least four years. Did you have a position before being in that group at Segal? A No. So it was more likely ten years in that capacity and 24 years in the consulting. Q As a benefits consultant? A Yes, sir.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION A I'm a benefits consultant and a client relationship manager for the Segal Consulting Multiemployer Group. Q And are those two different roles or are they part of the same role? A Part of the same role. Q And what do you do as a benefits consult and clients relations manager? A I'm assigned a book of business, multiemployer trust funds, pension and welfare annuity. My role is I'm basically the face of the Segal Company, present our services to them, actuarial, health benefits, pension benefits to the client, which would constitute usually the fund director, fund managers and the boards of trustees, and deal with the other professionals that are employed by the clients. Q When you refer to the fund director, what is the position of the fund director?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION We do projections of their benefit plans. We acquire or evaluate their insurance products, whether it be on an insured basis or a self-funded basis. We do self-funded feasibility studies. We solicit proposals from different vendors and we analyze them, present them to the clients, make recommendations regarding their benefit program. We do compliance work. Summary Plan Descriptions, participant notifications. Q And how long did you serve in that group? A Approximately ten years. Q So I think at least four years. Did you have a position before being in that group at Segal? A No. So it was more likely ten years in that capacity and 24 years in the consulting. Q As a benefits consultant?

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1	-	1	
1	ARBITRATION	1	ARBITRATION
2 A	Approximately ten to 12 clients and	2	Q When you became the benefit
	have either a pension, a welfare		consultant to the Pension Fund, who was the
	nd some will have annuity funds as		enrolled actuary to the Pension Fund?
⁵ well.		5	A I believe the enrolled actuary was
6 Q	So it's ten to 12 clients and eight		Cecilia Villar.
7 clients	could have a pension fund and a	7	Q Was she an employee of Segal?
8 welfar	e fund and possibly an annuity fund.	8	A Yes, sir.
9 A	Yes.	9	Q And for how long was Ms. Villar the
10 Q	So how many pension plans do you	10	enrolled actuary for the Pension Fund?
¹¹ provid	e services to?	11	A I believe only a couple years.
12 A	It would be 12.	12	Q And did she start being the
	Twelve?	13	enrolled actuary before you became the
	Twelve.		benefit consultant?
15 Q	And what types of pension plans are	15	A No. Actually, the person who was
16 those?		16	initially on the Fund was an enrolled
	Mostly they're defined benefit		actuary.
	or predominantly defined benefit	18	Q Okay. And who was that?
19 plans.	or productionally defined content	19	A Michael Kaplan.
	Are any of the 12 plans you are	20	Q So Mr. Kaplan was the enrolled
	ting to other than employers benefit	21	actuary immediately after Segal became the
22 plans?			actuary to the Pension Fund?
	The annuity fund would be defined	23	A Yes.
11	oution plans.	24	Q Okay. And Ms. Villar became the
25 Q	So the annuity funds in the 12 you		enrolled actuary?
\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	so the annuity runus in the 12 you	· ·	emoned detadity:
	Page 438		Page 440
1	Page 438 ARBITRATION	1	Page 440 ARBITRATION
1 2 mention	ARBITRATION	1 2	ARBITRATION
² mention	ARBITRATION ned?	2	ARBITRATION A She probably worked with Mr. Kaplan
² mention A 1	ARBITRATION ned? No, those would be separate.	2 3 C	ARBITRATION A She probably worked with Mr. Kaplan on it. In our Actuarial Department, we
 2 mention 3 A N 4 Q I 	ARBITRATION ned? No, those would be separate. 'm just focusing on pension funds.	2 3 0 4 U	ARBITRATION A She probably worked with Mr. Kaplan on it. In our Actuarial Department, we usually have a team that works on each of
2 mention 3 A N 4 Q I 5 A I	ARBITRATION ned? No, those would be separate.	2 3 c 4 v 5 c	ARBITRATION A She probably worked with Mr. Kaplan on it. In our Actuarial Department, we issually have a team that works on each of our clients which could there is a
 mention A N Q I A F funds. 	ARBITRATION ned? No, those would be separate. 'm just focusing on pension funds. Right. There would be 12 pension	2 3 0 4 0 5 0	ARBITRATION A She probably worked with Mr. Kaplan on it. In our Actuarial Department, we isually have a team that works on each of our clients which could there is a signing enrolled actuary. There could be
2 mention 3 A N 4 Q I 5 A I 6 funds. 7 Q A	ARBITRATION ned? No, those would be separate. 'm just focusing on pension funds. Right. There would be 12 pension And the NMDU pension plan would be	2 3 c 4 u 5 c 6 s 7 t	ARBITRATION A She probably worked with Mr. Kaplan on it. In our Actuarial Department, we isually have a team that works on each of our clients which could there is a signing enrolled actuary. There could be wo other team members in our Actuary
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2 mention 3 A N 4 Q I 5 A F 6 funds. 7 Q A 8 one of t 9 A N 10 Q A 11 services 12 going to 13 or the P 14 A O 15 by them 16 Q A 17 consults 18 or '91? 19 A I 20 consults 21 left the 22 into tha 23 later. A Q S	ARBITRATION ned? No, those would be separate. 'm just focusing on pension funds. Right. There would be 12 pension And the NMDU pension plan would be hose funds? Yes, sir. And for how long have you provided to the NMDU pension plan, which I'm to refer to as either the Pension Plan Pension Fund, okay? Okay. I believe Segal was retained in 1990 or 1991. And have you been the benefits ant from Segal to the plan since 1990 nitially, I was not then the lant that was assigned. The business Segal Company and then I stepped to role probably three to four years	2 3 4 0 4 5 6 8 7 8 1 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION A She probably worked with Mr. Kaplan on it. In our Actuarial Department, we isually have a team that works on each of our clients which could there is a signing enrolled actuary. There could be wo other team members in our Actuary Department that work for the client. I don't recall who was the actual signing enrolled actuary. Currently, it's Rosana Egan. Q When did Ms. Egan become the enrolled actuary? A Probably in the late '90s. Q Who was the administrator of the or Fund manager of the Pension Fund when you became the benefit consultant? A Barney Barlam. Q Can you spell that last name, olease. A B-A-R-L-A-M. Q And he is not still the

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1	ARBITRATION	1	ARBITRATION
2	the administrator of the Pension Fund?	2	in 1995, the mid '90s, and I believe he was
3	A Mid '90s.	3	dismissed about this time last year.
4	Q And who succeeded Mr. Barlam as the	4	Q So in roughly the winter of 2014?
5	administrator?	5	A That would be correct.
6	A Murray Schwartz.	6	Q And do you know why he was
7	Q Did Murray Schwartz become the	7	dismissed?
8	administrator before Rosana Egan became the	8	A The Fund transitioned to a
9	enrolled actuary?	9	third-party administrator and closed down
10	A I believe so.	10	the operations of an independent Fund
11	Q Who was the counsel to the Pension	11	office.
12	Fund when you became the benefit consultant?	12	Q And who is that third-party
13	A I don't recall.	13	administrator?
14	Q Do you know who the counsel is	14	A C & R Consulting.
15	today?	15	Q C & R, the ampersand sign?
16	A Today I think they employ three	16	A Yes, sir.
17	counsels: Proskauer Rose, employer counsel;	17	Q And is there anyone specifically at
18	Meyer, Suozzi, English & Klein, Union	18	C & R Consulting who provides services to
19	counsel; and Elizabeth O'Leary who is	19	the Fund?
20	with I don't recall her firm.	20	A I believe the principal would be
21	Q Okay.	21	Robert Costello.
22	And is there someone specific at	22	Q When you became benefit consultant
23	the Proskauer firm who handles the Pension	23	to the Fund, who was the auditor to the
24	Fund?	24	Fund?
25	A Neal Schelberg.	25	A As far as I can recall, it's been
	Page 442		Page 444
1	ARBITRATION	1	ARBITRATION
2	Q And for how long has Mr. Schelberg	2	the one that they have now.
3	been the employer counsel?	3	Well, I think he was dismissed
4	A My estimate, 15 years.	4	recently. So Mitchell Lewis was the
5	Q And is there someone at Meyer	5	M.R. Weiser I believe was his firm. I don't
6	Suozzi who handles the Pension Fund?	6	recall when he was initially engaged.
7	A Irwin Bluestein.	7	Q M.R.?
8	Q And how long has Mr. Bluestein been	8	A M.R. Weiser. W-E-I-S-E-R.
9	counsel to the Pension Fund?	9	Q And do you think that he's been
10	A Two to three years. They've only	10	terminated as the auditor to the Fund?
11	been recently retained.	11	A Yes.
12	Q And Ms. O'Leary, how long has she	12 13	Q And when did that occur?
13	been counsel to the Fund?	13	A I'm going to say fall of last year. Q And do you know why that happened?
1 /	A Classacians 1 1 '41 41 E 1		II And do you know why that hannand'
14 15	A She's probably worked with the Fund		
15	for the last five to six years.	15	A No.
15 16	for the last five to six years. Q And does Mr. Bluestein have a	15 16	A No. Q Who is the auditor currently?
15 16 17	for the last five to six years. Q And does Mr. Bluestein have a specified role as	15 16 17	A No.Q Who is the auditor currently?A I believe it's Steinberg,
15 16 17 18	for the last five to six years. Q And does Mr. Bluestein have a specified role as A He's Union counsel.	15 16 17 18	A No. Q Who is the auditor currently? A I believe it's Steinberg, Steckler & Picciurro is the name of the
15 16 17 18 19	for the last five to six years. Q And does Mr. Bluestein have a specified role as A He's Union counsel. Q And that leaves Ms. O'Leary. What	15 16 17 18 19	A No. Q Who is the auditor currently? A I believe it's Steinberg, Steckler & Picciurro is the name of the firm.
15 16 17 18 19 20	for the last five to six years. Q And does Mr. Bluestein have a specified role as A He's Union counsel. Q And that leaves Ms. O'Leary. What counsel is she?	15 16 17 18 19 20	A No. Q Who is the auditor currently? A I believe it's Steinberg, Steckler & Picciurro is the name of the firm. Q And is there a person at the firm
15 16 17 18 19 20 21	for the last five to six years. Q And does Mr. Bluestein have a specified role as A He's Union counsel. Q And that leaves Ms. O'Leary. What counsel is she? A Counsel to the counsel. She worked	15 16 17 18 19	A No. Q Who is the auditor currently? A I believe it's Steinberg, Steckler & Picciurro is the name of the firm. Q And is there a person at the firm who in particular provides services to the
15 16 17 18 19 20	for the last five to six years. Q And does Mr. Bluestein have a specified role as A He's Union counsel. Q And that leaves Ms. O'Leary. What counsel is she? A Counsel to the counsel. She worked a lot with the Fund director.	15 16 17 18 19 20 21	A No. Q Who is the auditor currently? A I believe it's Steinberg, Steckler & Picciurro is the name of the firm. Q And is there a person at the firm who in particular provides services to the Fund?
15 16 17 18 19 20 21 22	for the last five to six years. Q And does Mr. Bluestein have a specified role as A He's Union counsel. Q And that leaves Ms. O'Leary. What counsel is she? A Counsel to the counsel. She worked a lot with the Fund director. Q Okay. How long did Mr. Schwartz	15 16 17 18 19 20 21 22	A No. Q Who is the auditor currently? A I believe it's Steinberg, Steckler & Picciurro is the name of the firm. Q And is there a person at the firm who in particular provides services to the Fund? A I don't recall his name.
15 16 17 18 19 20 21 22 23	for the last five to six years. Q And does Mr. Bluestein have a specified role as A He's Union counsel. Q And that leaves Ms. O'Leary. What counsel is she? A Counsel to the counsel. She worked a lot with the Fund director.	15 16 17 18 19 20 21 22 23	A No. Q Who is the auditor currently? A I believe it's Steinberg, Steckler & Picciurro is the name of the firm. Q And is there a person at the firm who in particular provides services to the Fund?

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¹ ARBITRATION	¹ ARBITRATION
² A Yes.	² actuarial team, get the services completed,
³ Q At a full-time job?	gresented and provided to the necessary
4 A Yes.	either professionals or to the board.
⁵ Q And	Do you do actuarial work for the
6 A Now you are really asking me to go	⁶ funds?
⁷ back.	⁷ A No, I do not.
8 Q And what did you do?	8 Q Are you an actuary?
⁹ A Prior to Segal, I was a staff	⁹ A No.
¹⁰ accountant.	Q Do you know what the Segal blend
Q Where was that?	11 method is?
A I was a staff accountant for the	A It's a method for Segal to do
Kemper Insurance Group for a while. In	¹³ withdrawal liability.
between that, I had a sales position,	Q And do you know how it works?
actually.	A Generally, basically it's our
¹⁶ Q At Kemper?	preferred method. It's our best estimate of
A No, no. There's a time between	what the withdraw liability should be for a
18 Kemper and Segal when I was not doing	company that withdraws from a Pension Fund.
¹⁹ accounting.	Q And when did Segal start using that
Q Now, what types of services do you	20 method?
generally provide to multiemployer pension	
plans to which you are the benefit	Multiemployer Pension Act started back on
consultant?	the onset of the Multiemployer Pension Act.
A We serve as the enrolled actuary.	Q And that was before you actually
We do the annual actuarial valuations.	started work, correct? Or approximately the
Davis 446	Davis 440
Page 446	
¹ ARBITRATION	¹ ARBITRATION
We do the Schedule MB, which is the	same time?
actuarial information for the Form 5500 and	A Approximately around the same,
entails us doing a data request on the	4 '80s.
5 pension data. We review that to prepare the	Defore you became a benefit
6 valuations.	6 consultant?
We provide services related to	7 A Yes.
8 compliance, Summary Plan Descriptions, plan	
amendments. We attend boards of trustees	9 consultant, was Segal already using the
10 meetings.	orenaed method:
11 Q Okay. 12 And of those services that Segal	A 165.
That of those services that segai	Q Okay. This do you have an estimate
provides to 1 ension 1 and enems, which ones	of the number of chemes for which you have
do you get involved in:	served as the benefit consultant over the
15 A Wall Um the handfile according	¹⁵ 24 years you've been a benefit consultant?
15 A Well, I'm the benefits consultant	16 A Probably compayhers between 12 and
so I'm the day-to-day person that deals with	16 A Probably somewhere between 12 and
so I'm the day-to-day person that deals with the client, so I'm involved with pretty much	17 18.
so I'm the day-to-day person that deals with the client, so I'm involved with pretty much all our services that if our client needs a	17 18. 18 Q And how many of those pension funds
so I'm the day-to-day person that deals with the client, so I'm involved with pretty much all our services that if our client needs a particular service you know, we have a	17 18. 18 Q And how many of those pension funds 19 use the Segal blend?
so I'm the day-to-day person that deals with the client, so I'm involved with pretty much all our services that if our client needs a particular service you know, we have a normal retainer agreement which specifies	17 18. 18 Q And how many of those pension funds 19 use the Segal blend? 20 A Best of my knowledge, all of them.
so I'm the day-to-day person that deals with the client, so I'm involved with pretty much all our services that if our client needs a particular service you know, we have a normal retainer agreement which specifies what our services are.	17 18. 18 Q And how many of those pension funds 19 use the Segal blend? 20 A Best of my knowledge, all of them. 21 Q Are Segal actuaries required to use
so I'm the day-to-day person that deals with the client, so I'm involved with pretty much all our services that if our client needs a particular service you know, we have a normal retainer agreement which specifies what our services are. So I'm basically the person who	17 18. 18 Q And how many of those pension funds 19 use the Segal blend? 20 A Best of my knowledge, all of them. 21 Q Are Segal actuaries required to use 22 the Segal blend?
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1	ARBITRATION	1	ARBITRATION
2	estimate. Obviously, they can discuss with	2	be replaced on the Pension Fund any day.
3	clients if there's an alternative that might	3	Q Have you ever heard the term
4	be that ultimately what we use could be	4	"contribution base unit"?
5	up to the client.	5	A Yes.
6	Q Do you have an estimate of what	6	Q Do you know what it is?
7	percentage of Segal pension fund clients use	7	A It's usually the factor by which
8	the Segal blend?	8	contributions are submitted to a fund.
9	A Actual percentage, no. I would say	9	
10	a majority of them do.	10	Q And had you ever heard the term "contribution rate"?
11		11	A Contribution rate is usually the
12		12	
13	multiemployer pension plans Segal provides actuarial services to?	13	monetary amount that's contributed based
14		14	upon the factor of a base unit.
15	A Hundreds. I don't know the exact	15	Q Are the contribution rate and the
16	number.	16	contribution base unit the same thing?
17	Q You testified you go to trustee	17	A No.
18	meetings, correct?	18	Q During the time you've been the
19	A Yes.	19	benefit consultant to the Pension Fund, did
20	Q What do you do at trustee meetings?	20	you develop an understanding as to what the
21	A Present any particular services or	21	contribution base unit was for the Pension
22	work that we've done since the last meeting	22	Fund?
23	or that are required annually. In some	23	A My understanding is that
	instances, we take notes, record the minutes	23	contributions were submitted based on days
24 25	at the meetings, provide any comments or	25	or shifts worked.
23	consulting services based upon what's	23	Q And how did you develop that
	Page 450		Page 452
1	Page 450 ARBITRATION	1	Page 452 ARBITRATION
1 2	ARBITRATION reported by other professionals, accountant	1 2	
	ARBITRATION reported by other professionals, accountant or investment managers, if we have any input		ARBITRATION
2	ARBITRATION reported by other professionals, accountant or investment managers, if we have any input on how it affects the operations of the	2 3 4	ARBITRATION understanding? A Based on what was provided to us in terms of information on how the plan was
2	ARBITRATION reported by other professionals, accountant or investment managers, if we have any input	2 3 4 5	ARBITRATION understanding? A Based on what was provided to us in
2 3 4	ARBITRATION reported by other professionals, accountant or investment managers, if we have any input on how it affects the operations of the pension fund, the value of the funded status of a pension plan.	2 3 4 5 6	ARBITRATION understanding? A Based on what was provided to us in terms of information on how the plan was receiving contributions from its contributing employers.
2 3 4 5	ARBITRATION reported by other professionals, accountant or investment managers, if we have any input on how it affects the operations of the pension fund, the value of the funded status of a pension plan. Q Okay.	2 3 4 5	ARBITRATION understanding? A Based on what was provided to us in terms of information on how the plan was receiving contributions from its
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION reported by other professionals, accountant or investment managers, if we have any input on how it affects the operations of the pension fund, the value of the funded status of a pension plan. Q Okay. Did you ever take minutes at the NMDU Pension Fund? A Yes. Q And for what period of time did you do that? A Probably since when Murray Schwartz became the Fund director, the mid-1990s. Q Oh, okay. So did you take the minutes all during the time period that Mr. Schwartz was the Fund director? A Yes. Q And does he still take them now? A I'm not involved with the Fund as we used to be. Q What do you mean by that? A We were terminated as consultants	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION understanding? A Based on what was provided to us in terms of information on how the plan was receiving contributions from its contributing employers. Q And you said "based on information that was provided to us." And who provided that information to you? A The Fund office. Q And who in the Fund office? A Typically well, the staff, but usually I'm the oversight of the Fund director. Q Let's get into the staff a little bit of the Fund office. During the time that Mr. Schwartz was the Fund director, and let's start to if we can start from the last time that he was the Fund director, the winter of 2014, and work ourselves backwards, can you tell us who the staff members were of the Fund
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION reported by other professionals, accountant or investment managers, if we have any input on how it affects the operations of the pension fund, the value of the funded status of a pension plan. Q Okay. Did you ever take minutes at the NMDU Pension Fund? A Yes. Q And for what period of time did you do that? A Probably since when Murray Schwartz became the Fund director, the mid-1990s. Q Oh, okay. So did you take the minutes all during the time period that Mr. Schwartz was the Fund director? A Yes. Q And does he still take them now? A I'm not involved with the Fund as we used to be. Q What do you mean by that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION understanding? A Based on what was provided to us in terms of information on how the plan was receiving contributions from its contributing employers. Q And you said "based on information that was provided to us." And who provided that information to you? A The Fund office. Q And who in the Fund office? A Typically well, the staff, but usually I'm the oversight of the Fund director. Q Let's get into the staff a little bit of the Fund office. During the time that Mr. Schwartz was the Fund director, and let's start to if we can start from the last time that he was the Fund director, the winter of 2014, and work ourselves backwards, can you tell

	Page 453		Page 455
1	ARBITRATION	1	ARBITRATION
2	believe was Albergo.	2	trustees meeting. Occasionally. Few times
3	A woman who dealt mostly with the	3	a month. Tried to keep in contact with our
4	Welfare Fund, Laura Achuto (ph.).	4	clients more so when certain reporting
5	There was another woman that worked	5	requirements or valuation was going to be
6	there, first name was Rose. I don't know	6	completed. There was going to be a trustees
7	her last name.	7	meeting, we would help set the agenda with
8	There was a woman who dealt	8	him. So more frequently near meetings and
9	primarily with the pensions. Her name was	9	during filing times for the requirements.
10	Kathy Revy. R-E-V-Y.	10	Q Did there come a time when Segal
11	I think that was the most recent	11	was asked to perform withdrawal liability
12	staff prior to the closing of the Fund.	12	calculations for the Fund?
13	ARBITRATOR IRVINGS: I'm sorry.	13	A It was part of our service.
14	Did you say Rose?	14	Q And did it actually happen?
15	THE WITNESS: Rose.	15	A Yes. We probably calculated
16	A She did multiple tasks mostly with	16	several withdrawal liability calculations
17	the Welfare, I believe.	17	for employers.
18	Q And how long was Ms. Albergo	18	Q Okay. Let me show you Exhibit 42.
19	employed by the Fund office?	19	A Okay.
20	A I don't know precisely. She was	20	Q And you can see there are a bunch
21	there for at least ten years. Ten, fifteen	21	of pages here. They are all similar in
22	years that I can recall.	22	their setup, but please take a quick look at
23	Q So when you became the benefit	23	them.
24	consultant, she was not there?	24	Have you ever seen these before?
25	A I don't recall precisely. Many of	25	A Yes.
	Page 454		Page 456
1	_	1	
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION them were long-term employees.		ARBITRATION Q What are they?
2	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did	2	ARBITRATION Q What are they? A Those are paid by the Fund office.
2	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do?	2	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what
2 3 4	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long	2 3 4	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are.
2 3 4 5	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do?	2 3 4 5	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the
2 3 4 5	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of contributions, probably posting	2 3 4 5	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the page, you see under and I'm looking at
2 3 4 5 6 7	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of	2 3 4 5 6 7	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the
2 3 4 5 6 7 8	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of contributions, probably posting contributions day to day, journal entries,	2 3 4 5 6 7 8	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the page, you see under and I'm looking at 2371 so we're all looking at the same thing.
2 3 4 5 6 7 8 9 10	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of contributions, probably posting contributions day to day, journal entries, et cetera, working with the Fund's outside auditors to have the books ready for the annual audits.	2 3 4 5 6 7 8 9 10	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the page, you see under and I'm looking at 2371 so we're all looking at the same thing. 2371 at the bottom of the page, which is the second page. A Yup. Got it.
2 3 4 5 6 7 8 9 10 11	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of contributions, probably posting contributions day to day, journal entries, et cetera, working with the Fund's outside auditors to have the books ready for the annual audits. Q And did you communicate with	2 3 4 5 6 7 8 9 10 11 12	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the page, you see under and I'm looking at 2371 so we're all looking at the same thing. 2371 at the bottom of the page, which is the second page.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of contributions, probably posting contributions day to day, journal entries, et cetera, working with the Fund's outside auditors to have the books ready for the annual audits. Q And did you communicate with Ms. Albergo during the time both she was employed by the Fund and you were the benefit consultant? A Yes. Q And was that on a regular basis? A Occasionally. Occasionally. Most of our communications were directly with the director. Q With Mr. Schwartz? A With Mr. Schwartz. Q And how often would you speak to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the page, you see under and I'm looking at 2371 so we're all looking at the same thing. 2371 at the bottom of the page, which is the second page. A Yup. Got it. Q You see that? A Yes. Q So that's from March 31, 2013? A Uh-huh. Q I'm sorry. You have to answer audibly. A Yes, sir. I'm sorry. Q And so you see it says "effective 3-31-2013"? A Yes. Q And under that it says, "day rate, short night, long night, SAT night."
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of contributions, probably posting contributions day to day, journal entries, et cetera, working with the Fund's outside auditors to have the books ready for the annual audits. Q And did you communicate with Ms. Albergo during the time both she was employed by the Fund and you were the benefit consultant? A Yes. Q And was that on a regular basis? A Occasionally. Occasionally. Most of our communications were directly with the director. Q With Mr. Schwartz? A With Mr. Schwartz. Q And how often would you speak to Mr. Schwartz?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the page, you see under and I'm looking at 2371 so we're all looking at the same thing. 2371 at the bottom of the page, which is the second page. A Yup. Got it. Q You see that? A Yes. Q So that's from March 31, 2013? A Uh-huh. Q I'm sorry. You have to answer audibly. A Yes, sir. I'm sorry. Q And so you see it says "effective 3-31-2013"? A Yes. Q And under that it says, "day rate, short night, long night, SAT night." What are those four items?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION them were long-term employees. Q And as the bookkeeper, what did Ms. Albergo do? A I was never in the office, but long enough to know, handled the receipt of contributions, probably posting contributions day to day, journal entries, et cetera, working with the Fund's outside auditors to have the books ready for the annual audits. Q And did you communicate with Ms. Albergo during the time both she was employed by the Fund and you were the benefit consultant? A Yes. Q And was that on a regular basis? A Occasionally. Occasionally. Most of our communications were directly with the director. Q With Mr. Schwartz? A With Mr. Schwartz. Q And how often would you speak to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION Q What are they? A Those are paid by the Fund office. They're notification to the employer what the contribution rates to the Fund are. Q And on the left-hand side of the page, you see under and I'm looking at 2371 so we're all looking at the same thing. 2371 at the bottom of the page, which is the second page. A Yup. Got it. Q You see that? A Yes. Q So that's from March 31, 2013? A Uh-huh. Q I'm sorry. You have to answer audibly. A Yes, sir. I'm sorry. Q And so you see it says "effective 3-31-2013"? A Yes. Q And under that it says, "day rate, short night, long night, SAT night."

	Page 457	Page 459
1 ARBITRATION	1	ARBITRATION
that employees can work fo	or the employer.	A Did counsel ask us why?
³ Q Let me show you Ex		Q Yes.
4 MR. RICHMAN: I'm	mindful of 4	A No.
5 the time here.	5	Q Did Mr. Schwartz ask you why?
6 MR. MILLER: Thank		A I don't recall specifically but I'm
⁷ A Okay.	7	sure he did probably because he questioned
8 Q Can you identify wha		everything we did.
9 please.	9	Q Let's go to Exhibit 15, please.
10 A It's a letter prepared l		Can you identify this, please.
Mr. Schwartz requesting int	iornation in oraci	A Similar to the other one. It's a
to calculate the withdrawar	liability for 12	request for information in order to
the soft Corporation.		calculate the withdrawal liability in this case for The New York Times.
Q And did you prepare A Yes.	15	Q And you see the ccs are Jani
16 Q That is your signatur		Rachelson and Neal Schelberg.
bottom of the letter?	17	A She was the counsel of flavor at
18 A Yes, it is.	18	that time, I guess. She was counsel at that
Q And the ccs on the le	etter, vou see	time. And Neal Schelberg was.
20 Mr. Bluestein, Mr. Mangan		Q And she was Union trustee counsel,
A Yes.	21	Ms. Rachelson?
Q Mr. Schelberg you've	e identified.	A Yes.
Who is Mr. Mangan?	23	Q Did Mr. Schelberg or Ms. Rachelson
A Mr. Mangan was co-		ask you a question as to why you were
Funds at some point in time	e during the years 25	seeking shifts or hours?
	Page 458	Page 460
¹ ARBITRATION	1	ARBITRATION
2 that I was consultant to the Fu		11121111111
that I was constituint to the I t		A No.
were others.	3	A No. Q Let me show you Exhibit 16.
were others. Q Okay.	3 4	A No.Q Let me show you Exhibit 16.See if you can identify that for
were others. Q Okay. And did you send copie	as of this to	A No. Q Let me show you Exhibit 16. See if you can identify that for us.
were others. Q Okay. And did you send copie them?	3 4 5 of this to 5 6	 A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for
were others. Q Okay. And did you send copie them? A Yes.	s of this to 3 4 5 6 7	 A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability
were others. Q Okay. And did you send copie them? A Yes. Now, in the paragraph	s of this to 3 4 s of this to 5 6 7 numbered 2, 8	A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability calculation for the Employer City and
were others. Q Okay. And did you send copie them? A Yes. Now, in the paragraph you see that?	s of this to 3 4 5 6 7	A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability calculation for the Employer City and Suburban. Ccs at that time were Elizabeth
were others. Q Okay. And did you send copie them? A Yes. Now, in the paragraph you see that? A Yes.	s of this to 3 4 5 6 7 numbered 2, 8 9 10	A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability calculation for the Employer City and Suburban. Ccs at that time were Elizabeth O'Leary, counsel at that time, and Neal
were others. Q Okay. And did you send copie them? A Yes. Q Now, in the paragraph you see that? A Yes. A Yes. A AYes.	s of this to 3 4 5 6 7 numbered 2, 8 9 10	A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability calculation for the Employer City and Suburban. Ccs at that time were Elizabeth O'Leary, counsel at that time, and Neal Schelberg, except I believe he shouldn't
were others. Q Okay. And did you send copie them? A Yes. Q Now, in the paragraph you see that? A Yes. A Yes. A AYes.	and, as there 3 4 5 6 7 numbered 2, 8 9 10 that you 11	A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability calculation for the Employer City and Suburban. Ccs at that time were Elizabeth O'Leary, counsel at that time, and Neal Schelberg, except I believe he shouldn't have gotten this letter and that's why you
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were others. Q Okay. And did you send copie them? A Yes. Q Now, in the paragraph you see that? Q And that's information were asking for? A Correct. Q Why were you seeking information? A We require that to compayment schedule for the with liability. Q Let me show you Exhi in a different book. White on You don't have to turn by Exhibit 104, but did Mr. Blue Mr. Mangan or Mr. Schelberg	and, as there as of this to as of this to from numbered 2, that you tha	A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability calculation for the Employer City and Suburban. Ccs at that time were Elizabeth O'Leary, counsel at that time, and Neal Schelberg, except I believe he shouldn't have gotten this letter and that's why you see the line through it. So I'm not sure if he actually received it. Q Did Ms. O'Leary ask you why you were asking for shifts or hours? A No. Q Let me show you Exhibit 97. Can you identify what this is? A It's a memorandum from myself to Mr. Schwartz providing him with the withdrawal liability determined for Brooklyn News for a withdrawal that occurred in the
were others. Q Okay. And did you send copie them? A Yes. Q Now, in the paragraph you see that? A Yes. Q And that's information were asking for? A Correct. Q Why were you seeking information? A We require that to compayment schedule for the with liability. Q Let me show you Exhi in a different book. White on You don't have to turn by Exhibit 104, but did Mr. Blue Mr. Mangan or Mr. Schelberg	and, as there as of this to as of this to from numbered 2, that you tha	A No. Q Let me show you Exhibit 16. See if you can identify that for us. A Similar letter request for information to do a withdraw liability calculation for the Employer City and Suburban. Ccs at that time were Elizabeth O'Leary, counsel at that time, and Neal Schelberg, except I believe he shouldn't have gotten this letter and that's why you see the line through it. So I'm not sure if he actually received it. Q Did Ms. O'Leary ask you why you were asking for shifts or hours? A No. Q Let me show you Exhibit 97. Can you identify what this is? A It's a memorandum from myself to Mr. Schwartz providing him with the withdrawal liability determined for Brooklyn

	Dage 461		D272 462
1	Page 461	1	Page 463
1 2	ARBITRATION	2	ARBITRATION
	side, it says Exhibit K?	3	And why was this an estimate?
3	A Yes, sir.	4	A I don't believe it was known that
4	Q What is that?		it was definitely a withdrawal from the
5	A That would identify that this was	5	Fund. So the date was not certain. So if
6	an exhibit to the board of trustees meeting	6	the date's not certain, we'd assume it's an
7	minutes.	7	estimate because if it's a later date, the
8	Q And you see that there is a cc on	8	actual withdrawal liability would have to be
9	the second page	9	calculated based on a subsequent valuation.
10	A Right.	10	Q Well, if you look in the first
11	Q to co-counsel.	11	paragraph, in the third sentence, the
12	A Yes.	12	sentence that begins with, "Since the
13	Q And do you know who co-counsel was	13	withdrawal occurred after May 31, 1994,
14	at that time?	14	these results are preliminary and must be
15	A I believe Union counsel may have	15	determined upon the completion of the
16	been Warren Mangan's firm. I'm not a	16	May 31, 1994 valuation."
17	hundred percent sure who it was, Employer	17	A And that's why it would be
18	counsel.	18	considered an estimate because we did it
19	Q Okay. Let's go to flip you back	19	based upon results of the May 31, 1993
20	to the first page. And that's look at	20	valuation.
21	the second paragraph.	21	Q But at the time it was done, you
22	And if you would just read to	22	actually knew the withdrawal date.
23	yourself the second sentence in the second	23	MR. EATON: Objection.
24	paragraph.	24	ARBITRATOR IRVINGS: Sustained.
25	A Okay.	25	BY MR. RICHMAN:
	Page 462		Page 464
1	_	1	
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION Q Why is the phrase "average annual		ARBITRATION Q Did you know the withdrawal date at
2	ARBITRATION Q Why is the phrase "average annual shifts of 5835" used? Why did you use that	2	ARBITRATION Q Did you know the withdrawal date at the time this estimate was done?
2	ARBITRATION Q Why is the phrase "average annual shifts of 5835" used? Why did you use that in this memo?	2	ARBITRATION Q Did you know the withdrawal date at the time this estimate was done? A Well, since this was when they
2 3 4	ARBITRATION Q Why is the phrase "average annual shifts of 5835" used? Why did you use that in this memo? A That's used to calculate the annual	2 3 4	ARBITRATION Q Did you know the withdrawal date at the time this estimate was done? A Well, since this was when they requested it, it was subsequent to the end
2 3 4 5	ARBITRATION Q Why is the phrase "average annual shifts of 5835" used? Why did you use that in this memo? A That's used to calculate the annual payment schedule. The shifts and the	2 3 4 5	ARBITRATION Q Did you know the withdrawal date at the time this estimate was done? A Well, since this was when they requested it, it was subsequent to the end of the May plan year, so we assumed that it
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	Daga 165		Daga 467
	Page 465		Page 467
1	ARBITRATION	1	ARBITRATION
2	A As I said earlier, when we	2	Q Does your role include reviewing
3	developed the payment schedule, we used the	3	collective bargaining agreements that give
4	shifts as the base unit and the highest	4	rise to contributions?
5	contribution rate in effect.	5	A No.
6	MR. EATON: If you got another	6	Q Does your role include receiving or
7	one of these in the mid '90's that	7	reviewing the reports that contributing
8	have shifts in it, I'm going to	8	employers send to the Fund each month that
9	stipulate	9	detail their contributions?
10	MR. RICHMAN: I've got	10	A Remittance reports, no.
11	Exhibit 101, 102	11	Q Does your role include auditing the
12	ARBITRATOR IRVINGS: Well, they	12	contributing employers to ensure that they
13	say what they're going to say. If	13	contribute the correct amount of money?
14	you are only pointing out what the	14	A No.
15	letter says, they say what they say.	15	Q Does your role include any direct
16	MR. RICHMAN: All right.	16	interaction with the contributing employers?
17	MR. MILLER: Because we don't	17	A No.
18	have a lot of time.	18	Q And that would include The New York
19	BY MR. RICHMAN:	19	Times, correct?
20	Q Was the Segal blend ever discussed	20	A Correct.
21	at trustee meetings that you attended?	21	Q Let's talk a little bit about past
22	A It may have been. I don't recall	22	practices.
23	specifically.	23	You discussed some exhibits with
24	Q Was the interest assumption used to	24	your counsel where you showed withdrawal
25	calculate withdrawal liability ever	25	liability corrections; is that right
	carculate withdrawar hability ever		naomty corrections, is that right
	Page 466		7 460
	1 4 9 0 1 0 0		Page 468
1		1	_
1 2	ARBITRATION	1 2	ARBITRATION
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	Page 469		Page 471
1	ARBITRATION	1	ARBITRATION
2	Q And this was a demand for complete	2	Do you see that?
3	withdrawal; is that right?	3	A Yes.
4	A This was in response to a request	4	Q Do you know if Passaic actually
5	from the Fund to do a calculation of the	5	withdrew?
6	withdrawal liability.	6	A No.
7	Q So did Brooklyn News actually	7	Q Is there anything in this letter
8	withdraw?	8	that describes the withdrawal as triggered
9	A I don't know.	9	by a 70 percent decline in contribution base
10	Q Let's look at the first sentence.	10	units?
11	It says, "As requested, we have calculated	11	A No.
12	the withdrawal liability for Brooklyn News	12	MR. EATON: And,
13	Company which withdrew in the year ending	13	Mr. Arbitrator, there were several
14	May 31, 1989."	14	letters sort of analogous to what Ron
15	Do you still think this is an	15	did. There were several letters that
16	estimate or is this an actual	16	were like this from the mid '90's.
17	A I didn't say it was an estimate.	17	I can read the exhibit numbers I
18	Q Let me finish the question.	18	was going to point to so it's clear in
19	Is that an estimate or is this a	19	the record, but
20	demand for a withdrawal liability?	20	MR. RICHMAN: If you needed to
21	A It's not a demand. It's a request	21	make the time, that's fine.
22	for the calculation. It's the calculation	22	MR. EATON: That's fine. So I
23	of withdrawal liability if this employer	23	would just like to give him the
24	actually withdrew in the time period	2.4	opportunity to review them because I
25	specified by the client to us.	25	have the same sort of series of
	Page 470		Page 472
1	Page 470	1	Page 472
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION Q So is it your testimony you don't	2	ARBITRATION questions.
2	ARBITRATION Q So is it your testimony you don't know whether Brooklyn News Company withdrew?	2	ARBITRATION questions. ARBITRATOR IRVINGS: Perfect.
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2 3 4 5 6 7 8	ARBITRATION Q So is it your testimony you don't know whether Brooklyn News Company withdrew? A I don't know if they actually withdrew and were assessed a withdrawal liability. Q Is there any mention in this calculation of an estimate that the trigger of the withdrawal was a 70 percent decline	2 3 4 5 6 7	ARBITRATION questions. ARBITRATOR IRVINGS: Perfect. MR. EATON: Let me give you the exhibit numbers. You can take a look at them and I'll ask the same sort of questions. MR. RICHMAN: Fine. MR. EATON: So it's 99, 100,
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1	ARBITRATION	¹ ARBITRATION
2	ARBITRATOR IRVINGS: 103, also.	Q And by "the Fund," who do you mean
3	THE WITNESS: And the question?	³ in particular?
4	BY MR. EATON:	⁴ A Fund director.
5	Q So my question is: In any of those	5 Q And who would that be in April of
6	letters pertaining to withdrawal liability,	6 2010?
7	did any of them have as a trigger for the	⁷ A Murray Schwartz.
8	withdrawal a 70 percent decline in	8 Q Did you have a conversation with
9	contribution base units?	9 Mr. Schwartz about why Mr. Schelberg should
10	A I don't believe so.	not get this document?
11	Q Did you read the collective	A I probably sent it to he
12	bargaining agreements that gave rise to	probably saw that and told me not to extend
13	contributions for any of the employers	it to him. Or he may have gotten this
14	listed in those letters?	letter.
15	A No.	Q Meaning Mr. Schelberg?
16	Q Let's talk about Exhibit 16.	A Yes, possibly.
17	Do you have it?	Q Who put the line through it, if you
18	A Yes.	18 know?
19	Q I believe you testified on your	19 A I don't know.
20	direct examination that in the bottom	Q When did you have this conversation
21 22	left-hand corner where it says "cc,"	with Mr. Schwartz about Mr. Schelberg not
23	Mr. Schelberg's name has a line through it;	receiving this letter:
24	is that right?	11 Trobably around the time period
25	A Yes.	this letter going out, 2010.
2.5	Q And you testified that the reason	Q Was it a phone call or in person?
	Page 474	Page 476
1	Page 474	Page 476
1 2	ARBITRATION	1 ARBITRATION
2	ARBITRATION there was a line through it is because he	1 ARBITRATION 2 A Probably a phone call.
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1	ARBITRATION	1	ARBITRATION
2		2	
3	meetings become minutes? A The minutes are drafted from my	3	contains a lot of information about the Fund?
4	notes. I would draft them. They become	4	
5		5	A Yes. O And would the information in those
6	typed, sent usually with this Fund were	6	
7	sent to the Fund director and typically Neal Schelberg.	7	valuations be important to contributing
8	<u>C</u>	8	employers?
9	They would edit and correct the minutes, return to me, which would then be	9	A Yes.
10		10	Q Let's take a look at Exhibit 20,
11	considered the final minutes, and they would then be distributed to the board and	11	please. Are you there?
12	professionals who attended the meeting	12	Are you there? A Yes.
13		13	
14	either via most likely mail or, in some	14	Q Is this an example of an actuarial valuation?
15	instances, e-mail to those who got e-mail. Q Is there someone who didn't get	15	
16	e-mail?	16	A This would be a Segal actuarial valuation.
17	A The Fund was not big on e-mail.	17	Q And this is for review as of
18		18	
19	Q Let's talk about communications from the Fund.	19	June 1, 2006; is that right? A Yes.
20	Do you know what an actuarial	20	
21	valuation is?	21	Q Let me direct your attention to Page SEGAL-280. That's I think the very
22	A Yes.	22	
23		23	last page. A Yes.
24	Q Does Segal draft the actuarial	24	
25	valuations for the Fund each year? A Yes.	25	Q And at the very bottom, it says "contribution rate."
20	A 1 es.	23	contribution rate.
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	rage 476		Page 480
1	ARBITRATION	1	Page 480 ARBITRATION
1 2	ARBITRATION	1 2	ARBITRATION
	ARBITRATION		
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	Page 481		Page 483
1	ARBITRATION	1	ARBITRATION
2	amount. It's just giving you explanation	2	A Yes.
3	that the rate is a percentage of the wage,	3	Q Let's look at Exhibit 27.
4	just the rate.	4	And this is the actuarial valuation
5	3	5	
6	Q I don't understand what you mean by	6	as of 6-1-2013; is that right?
7	"It doesn't give you an exact amount."	7	A Yes.
	What do you mean by that?	8	Q Could you flip to the last page
8	A In other words, if the wage rate		that's SEGAL-760.
9	was \$100, the contribution rate would be	9	A Yes.
10	6 percent of the wage which could be six	10	Q Are you there?
11	dollars.	11	A Yes.
12	Q Okay. Does a rate always have to	12	Q What does it state next to
13	be a monetary amount?	13	"contribution rate" here?
14	A Typically, it would be.	14	A Eight percent of the shift rate per
15	Q I think my question a little bit	15	shift effective January 1, 2009.
16	different. I asked does a rate always have	16	Q And is it fair to say that the
17	to be a monetary amount.	17	description of the contribution rate here
18	MR. RICHMAN: I think he	18	differs from the description listed for
19	answered it.	19	contribution rates in the prior actuarial
20	A Contribution rate is typically a	20	valuations?
21	monetary amount.	21	A It differs in the percentage and it
22	Q Okay. So typically doesn't mean	22	differs in the wording, yes.
23	always, right?	23	Q And why is the wording different?
24	A Well, if I could interject my	24	A We at Segal decided to make it
25	experience with other funds, the	25	clearer as to what the explanation of the
20	experience with other runds, the		clearer as to what the explanation of the
	Page 482		Page 484
	Page 482		Page 484
1	ARBITRATION	1	ARBITRATION
2	ARBITRATION contribution rate is a dollar amount and it	2	
	ARBITRATION		ARBITRATION shift rate was. Q And how was this language clearer
2	ARBITRATION contribution rate is a dollar amount and it	2	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously?
2	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in	2	ARBITRATION shift rate was. Q And how was this language clearer
2 3 4	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to	2 3 4	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously?
2 3 4 5	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts.	2 3 4 5	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate.
2 3 4 5 6	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks,	2 3 4 5 6	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of
2 3 4 5 6 7	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts. Q Could a rate be a percentage?	2 3 4 5 6 7	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate. Q Maybe I didn't understand the answer.
2 3 4 5 6 7 8	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts. Q Could a rate be a percentage? A Could the rate be well, it's a	2 3 4 5 6 7 8	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate. Q Maybe I didn't understand the answer. How was this language more clear
2 3 4 5 6 7 8	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts. Q Could a rate be a percentage? A Could the rate be well, it's a percentage of something which ultimately	2 3 4 5 6 7 8	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate. Q Maybe I didn't understand the answer.
2 3 4 5 6 7 8 9	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts. Q Could a rate be a percentage? A Could the rate be well, it's a percentage of something which ultimately becomes mathematically a number. Q Let's look at Exhibit 21.	2 3 4 5 6 7 8 9	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate. Q Maybe I didn't understand the answer. How was this language more clear than the language used previously? A Because it indicates that it's a
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts. Q Could a rate be a percentage? A Could the rate be well, it's a percentage of something which ultimately becomes mathematically a number. Q Let's look at Exhibit 21. And this is the actuarial valuation as of June 1, 2007. A Uh-huh. Q Could you flip to Page SEGAL-342. Could you read what's listed for	2 3 4 5 6 7 8 9 10 11 12 13 14 15	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate. Q Maybe I didn't understand the answer. How was this language more clear than the language used previously? A Because it indicates that it's a percentage of the shift rate per shift. Q So is it your view that the language in prior actuarial valuations were unclear? A No. It was just probably not as
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts. Q Could a rate be a percentage? A Could the rate be well, it's a percentage of something which ultimately becomes mathematically a number. Q Let's look at Exhibit 21. And this is the actuarial valuation as of June 1, 2007. A Uh-huh. Q Could you flip to Page SEGAL-342. Could you read what's listed for contribution rate, please. A Six percent of wages effective June 1, 1999, although 6.5 percent of wages effective January 1, 2008. Q And is it fair to say that the actuarial valuations for the years 2007 through approximately 2012 describe the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate. Q Maybe I didn't understand the answer. How was this language more clear than the language used previously? A Because it indicates that it's a percentage of the shift rate per shift. Q So is it your view that the language in prior actuarial valuations were unclear? A No. It was just probably not as clear as it should have been. At the time, we used wages because there was an allocation of contributions going from the Pension Fund to the Welfare Fund. As you recall earlier, the rates were lower percentages and the reason for
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION contribution rate is a dollar amount and it gets contributed based upon a factor in order to submit the employer submit to the Fund. Could be based on hours, weeks, days, shifts. Q Could a rate be a percentage? A Could the rate be well, it's a percentage of something which ultimately becomes mathematically a number. Q Let's look at Exhibit 21. And this is the actuarial valuation as of June 1, 2007. A Uh-huh. Q Could you flip to Page SEGAL-342. Could you read what's listed for contribution rate, please. A Six percent of wages effective June 1, 1999, although 6.5 percent of wages effective January 1, 2008. Q And is it fair to say that the actuarial valuations for the years 2007	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION shift rate was. Q And how was this language clearer than the language used previously? A This refers to the percentage of the shift rate or the wage rate. Q Maybe I didn't understand the answer. How was this language more clear than the language used previously? A Because it indicates that it's a percentage of the shift rate per shift. Q So is it your view that the language in prior actuarial valuations were unclear? A No. It was just probably not as clear as it should have been. At the time, we used wages because there was an allocation of contributions going from the Pension Fund to the Welfare Fund. As you recall earlier, the rates

Page 485	Page 487
MOTITATION	THE THE TION
that's part of the reason why we were	whether certain employees get para a rate
referring it to that previously.	different than what's listed here on these
Q Did you consult with the I that for	Sheets:
changing the language:	11 Repeat that, prease.
A NO.	Q Do you have any understanding about
when did you change this language:	whether employees receive pay rates that are
A when we prepared this earner last	different than the ones listed on this sheet?
year.	Sheet:
Q And was that after The New York Times challenged the withdrawal liability	A Specific employees? Q Yeah, correct. If they do
assessment in September of 2013?	something to earn some sort of pay different
13 A I believe it was.	than what's on these.
	14 A No.
Q Let me direct your attention to Exhibit 42.	15 Q Let's talk a little bit about
You were asked about this on your	16 withdrawal liability estimates.
direct testimony.	17 Is it common for a contributing
What is your understanding of what	employer to request an estimate of its
this sheet means?	potential withdrawal liability?
A It's informing the contributing	20 MR. RICHMAN: Objection as to
employer, in this case The New York Times,	what "common" means. What does that
of the contribution rate they should submit	mean?
to the Fund, the Pension and Welfare Funds.	MR. EATON: If he understands
Q Do you get this document well,	the question, he can answer.
25 strike that.	25 ARBITRATOR IRVINGS: Well,
37.11.7 1.140.	121211111101111111111111111111111111111
	The state of the s
Page 486	Page 488
1 ARBITRATION	¹ ARBITRATION
ARBITRATION Under what circumstances would you	ARBITRATION common" is unclear. Why don't you
ARBITRATION Under what circumstances would you see this rate sheet?	1 ARBITRATION 2 "common" is unclear. Why don't you rephrase the question.
ARBITRATION Under what circumstances would you see this rate sheet? A Typically, we were getting this	1 ARBITRATION 2 "common" is unclear. Why don't you 3 rephrase the question. 4 BY MR. EATON:
ARBITRATION Under what circumstances would you see this rate sheet? A Typically, we were getting this when we requested information for the	1 ARBITRATION 2 "common" is unclear. Why don't you 3 rephrase the question. 4 BY MR. EATON: 5 Q In your experience, do employers
ARBITRATION Under what circumstances would you see this rate sheet? A Typically, we were getting this when we requested information for the withdrawal liability.	ARBITRATION Common" is unclear. Why don't you rephrase the question. BY MR. EATON: Q In your experience, do employers request estimates of their withdrawal
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Q They line actuaries, right: Q Let's look at Exhibit 5.				
A They have actuaries.		O linevinire actuaries, right?	4	Q Let's look at Exhibit 3.
			25	This is an astimate for a samulate

	Page 493	Page 4	195
1	ARBITRATION	¹ ARBITRATION	
2	withdrawal; is that correct?	2 Q And was it your understanding that	
3	A Yes.	the Fund sent this to The New York Times?	
4	Q And it includes information about a	⁴ A I can't answer that.	
5	total withdrawal liability of approximately	⁵ Q If you could look at Exhibit 15,	
6	\$38 million.	6 please.	
7	Do you see that?	7 And this is a letter from you to	
8	A Yes.	8 the Fund regarding withdrawal liability	
9	Q And it includes information about a	9 calculations; is that right?	
10	payment schedule; is that right?	10 A Yes.	
11	A Yes.	Q And the date on this letter is	
12		¹² March 11, 2009?	
13	Q And attached to this letter is	13 A Correct.	
14	something called a Report on Employer		
15	Withdrawal Liability for the withdrawal in	Q And you write, in order to	
16	the year ended May 31, 2013.	complete the request for a calculation of	
17	Do you see that?	withdrawar hability in the plan year chang	.11
	A Yes.	May 31, 2007 for the few fork times, we	
18	Q And this is a 16-page report that,	need the following information from the full	d
19	is it fair to say, lays out in some detail	office."	
20	how the Fund calculated the estimate?	Do you see that?	
21	A How the Segal Company	A Yes.	
22	Q How the Segal Company calculated	Q And one of the things you request	
23	the estimate?	is Number 2, "Total base units	
24	A Yes.	shifts/hours."	
25	Q It describes the assumptions used;	Do you see that?	
	Page 494	Page 4	196
1	_		196
1 2	ARBITRATION		196
	ARBITRATION is that right?	1 ARBITRATION 2 A Yes.	196
2	ARBITRATION is that right? A Correct.	ARBITRATION A Yes. Q And why did you request	196
2 3	ARBITRATION is that right? A Correct. Q It calculates the liability under	ARBITRATION A Yes. Q And why did you request shifts/hours?	
2 3 4	ARBITRATION is that right? A Correct. Q It calculates the liability under two different methods?	ARBITRATION A Yes. Q And why did you request shifts/hours? A We usually request that in order	
2 3 4 5	ARBITRATION is that right? A Correct. Q It calculates the liability under two different methods? A Yes.	ARBITRATION A Yes. Q And why did you request shifts/hours? A We usually request that in order determine the payment schedule.	to
2 3 4 5 6	ARBITRATION is that right? A Correct. Q It calculates the liability under two different methods? A Yes. Q And it breaks down the calculations	ARBITRATION A Yes. Q And why did you request shifts/hours? A We usually request that in order determine the payment schedule. Q And what's your understanding of	to
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		1	
	Page 497		Page 499
1	ARBITRATION	1	ARBITRATION
2 E	xhibit 15 to request information from other	2	INDEX
	ands which are your clients?	3	PAGE
	A Typically, yes.	4	WITNESS: DARREN FRENCH
5	Q So you don't recall one way or the	5	Direct Examination by Mr. Miller 247
6 o	ther whether you actually calculated a	6	Cross Examination by Mr. Richman 338
	vithdrawal liability estimate as a result of	7	Redirect Examination by Mr. Miller 421
	nis letter you sent to the Fund?	8	·
9	A If we did a calculation for the	9	
10 pe	eriod ended 2009, then we would have gotten	10	WITNESS: ROSANA EGAN
	nformation from them.	11	Direct Examination by Mr. Miller 422
12	Do I recall if we did a	12	2 HOUR Entermitation of This Printer 422
	alculation? Yeah, I don't recall if we did	13	
0.	ne. If you have one, then we would have	14	WITNESS: JOHN URBANK
	one it and gotten information to do so.	15	Direct Examination by Mr. Richman 433
16	ARBITRATOR IRVINGS: Let me ask	16	Cross Examination by Mr. Eaton 466
	you this, and I hate to do this,	17	Cross Examination by IVII. Earth 400
18	but	18	
19		19	
0.0	MR. RICHMAN: I have recross,	20	
21	too.	21	
	ARBITRATOR IRVINGS: So what	21	
	we're going to have to do is we are		
23	not going to finish in the next day,	23	
	and I understand you can't come the	24	
25	next day we have, but we'll just have	25	
	Page 498		Page 500
1	_	1	-
1	ARBITRATION	2	ARBITRATION CERTIFICATE
	o have him back because I don't want	3	STATE OF NEW YORK)
	o cut off your cross examination.		: SS.
	You are entitled to whatever time you	4	COUNTY OF NEW YORK)
	need. And you are entitled to	5	I, BARBARA R. ZELTMAN, Shorthand
	direct. But I certainly gave	6	Reporter and Notary Public, within and
	prewarning	7	for the State of New York, do hereby
8	MR. RICHMAN: That, you did.	8	certify:
9	ARBITRATOR IRVINGS: from	9	That this transcript is a true
	yesterday that that's the limit that	10 11	record of the proceedings had.
	have today.	12	I further certify that I am not related to any of the parties to this
12	MR. RICHMAN: Can we try	13	action by blood or marriage, and that I
	et's go off the record for a second.	14	am in no way interested in the outcome of
14	MR. MILLER: We are concluding	15	this matter.
	for the day.	16	IN WITNESS WHEREOF, I have hereunto
16		17	set my hand this 18th day of February,
17	(Whereupon, the proceedings were	18	2015.
	adjourned at 3:58 p.m.)	19	
19		20	
20		21	DADDADA D. ZET ZMANI
21			BARBARA R. ZELTMAN
22		22	Court Reporter and Notary Public
23		23	
24		24	
2 =		25	
25		1	

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1	ARBITRATION - VOLUME III
2	AMERICAN ARBITRATION ASSOCIATION
	X
3	THE NEW YORK TIMES COMPANY,
4	Petitioner,
5	
	V.
6	
	NEWSPAPER and MAIL DELIVERERS'-PUBLISHERS'
7	PENSION FUND,
8	Claimant.
	X
9	
10	
11 12	ARBITRATION
13	VOLUME III
14	DAY 3
15	New York, New York
16	Tuesday, February 24, 2015
17	
18	REPORTED BY: BARBARA R. ZELTMAN
19	Professional Stenographic Reporter
20	
21	Job Number: 90059
22	
23	
24	
25	

	Page 502	Page 503
1	_	
2	ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III 2 APPEARANCES:
3		3
3	Eshmorn 24, 2015	4 ARBITRATOR: MARK L. IRVINGS, ESQ.
4	February 24, 2015 9:07 a.m.	5 24 Elba Street
5	9:07 a.m.	Brookline, Massachusetts 02446
6	Authoration non-conditional total at Automissis	8
7	Arbitration proceedings held at American	9 JONES DAY
8	Arbitration Association, 120 Broadway, New York, New	Attorneys for Petitioner
9	York, before BARBARA R. ZELTMAN, a Professional	¹⁰ 51 Louisiana Avenue, N.W.
10	Stenographic Reporter and Notary Public within and	Washington, D.C. 20001
11	for the State of New York.	11 BY: EVAN MILLER, ESQ. MIGUEL EATON, ESQ.
12		12 YAAKOV ROTH, ESQ.
13		13
14		14
15		15
		SCHULTE ROTH & ZABEL
16 17		Attorneys for the Claimant 919 Third Avenue
18		New York, New York 10022
19		BY: RONALD RICHMAN, ESQ.
		MAX GARFIELD, ESQ.
20 21		19 ADAM GARTNER, ESQ.
		20 21
22		22
23		23
24 25		²⁴ (Cont'd)
23		25
	Page 504	Page 505
		1490 303
1	ARRITRATION - VOLUME III	1 ARBITRATION - VOLUME III
1 2	ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III APPEARANCES: (Cont'd)	¹ ARBITRATION - VOLUME III
2	APPEARANCES: (Cont'd)	1 ARBITRATION - VOLUME III 2 ARBITRATOR IRVINGS: Okay. You
2	A P P E A R A N C E S: (Cont'd) ALSO PRESENT:	ARBITRATION - VOLUME III ARBITRATOR IRVINGS: Okay. You are still under oath. MR. MILLER: On the record.
2 3 4	A P P E A R A N C E S: (Cont'd) ALSO PRESENT: Ethan Kra,	1 ARBITRATION - VOLUME III 2 ARBITRATOR IRVINGS: Okay. You 3 are still under oath. 4 MR. MILLER: On the record. 5 ARBITRATOR IRVINGS: On the
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Page 506	Page 507
ARBITRATION - VOLUME III current year, correct? A Yes. Q And does it also the Actuarial Valuation Report include information that is required to be filed with the annual Form 5500? A Yes. Some of the information there is used for the 5500. Q It's incorporated into A Schedule B/MB for the 5500. Q Okay. Ms. Egan, can you turn your attention to the white binder in front of you, Exhibit 25. A Okay. Q And what is that document? A It's the actuarial valuation as of June 2011. Q And this is the Actuarial Valuation Report for the Newspaper and Mail Deliverers'-Publishers' Pension Fund, correct? A Yes. Q And did you prepare this report?	ARBITRATION - VOLUME III A Yes. Q Let me direct your attention to the page that is labeled SEGAL-000606. A Okay. I'm there. Q And this page is entitled Certificate of Actuarial Valuation. A Yes. Q And what is a Certificate of Actuarial Valuation? A It basically lays out the different liabilities and assets for the valuation of the year. Q And your name appears at the bottom of this certification; is that correct? A Yes. Q Turn to the very next page, which is essentially a table of Certificate Contents. Am I correct that the eight exhibits and the information contained in those exhibits that is listed on this next page are part of the Certificate of Actuarial Valuation? A Yes.
ARBITRATION - VOLUME III Q And the information contained in those eight exhibits in fact comprises the Certificate of Actuarial Valuation? A Yes. Q And you are in fact certifying to the accuracy of the information contained on those exhibits, correct? A Yes. Q Let's go back to the certificate page. And let me draw your attention to the last paragraph and the sentence, the second sentence which states, "To the best of my knowledge, the information supplied in this actuarial valuation is complete and accurate except as noted in Exhibit 1." Do you see that sentence? A Yes. Q Is it fair to say that you personally are certifying to the accuracy of	ARBITRATION - VOLUME III the reasonableness of the information? A We are given some information to do the numbers, and we don't audit that information but we look at it for reasonableness. So the information that goes in, we see that it's reasonable and then come up with our numbers. Q At the time you prepared this certificate in Exhibit 25, did you believe that the information contained in this certificate was accurate to the best of your knowledge? A Yes. Q Do you still believe that? A Yes. Q Now, let me direct your attention to the page that's been labeled SEGAL-000628. Are you there?
the information that's contained in this Certificate of Actuarial Valuation? A To the reasonableness of the accuracy. Q You, personally, are certifying to	Are you there? A Yes. Q Okay. And you'll see that there's a definition of "contribution rate" in the middle of that page. Are you there? Are you there? A Yes.

		1	
	Page 510		Page 511
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	Q Does that definition of	2	contribution rate using these same general
3	contribution rate make any mention of	3	words?
4	shifts?	4	A I don't remember. "Before." When
5	A There, no.	5	you say "before," within the last 15 years,
6	Q Does it make any mention of	6	20 years?
7	employees' per-shift wage rates?	7	Q Well, why don't we quickly do this.
8	A No. Wait. Can you say that again?	8	MR. RICHMAN: Can I be helpful
9	Q Yes. Does it make any mention of	9	here? They say what they say.
10	employees per shift wage rates?	10	MR. MILLER: Well, but it's my
11	A It says "8 percent of the wages."	11	examination.
12	Q It does not say "8 percent of	12	MR. RICHMAN: It is your
13	employees' per-shift wage rates," correct?	13	examination. I'm trying to be
14	A It doesn't use those words.	14	helpful.
15	Q Thank you.	15	MR. MILLER: That's all right.
16	Is this description of contribution	16	Thank you.
17	rate, in your judgment, accurate?	17	BY MR. MILLER:
18	A Yes.	18	Q Why don't we quickly turn to
19	Q Rather than walk through each of	19	Exhibit 20. And why don't you turn to the
20	the annual actuarial valuation	20	last page of that exhibit which also
21	certifications and annual valuation reports,	21	contains a description of contribution rate.
22	let me just ask you this question: Did the	22	Do you see that?
23	actuarial valuation reports' certificates	23	A Yes.
24	that you prepared prior to this valuation	24	Q And this Actuarial Valuation Report
25	report as of June 1, 2011 describe the	25	is for the year as of June 1, 2006; is that
			is for the year as of valle 1, 2000, is that
	Page 512		Page 513
1	_	1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
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	D 514		D 515
	Page 514		Page 515
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	Q And is this actuarial valuation	2	Q In fact, this description omits use
3	analogous to the two that we just examined	3	of the word "wages," doesn't it?
4 5	in terms of its overall purpose?	4	A Yes.
6	A Yes.	5 6	Q And this language does use the word
7	Q Let me direct your attention again	7	"shift," right? A "Shift rate."
8	to the final page which labeled 000760.	8	
9	And please review the description there respecting contribution rate.	9	Q That's right. "Shift rate." Do you believe that the language
10	A Okay.	10	that you previously used, "8 percent of
11	Q Did you draft this language?	11	wages," means the same thing as "8 percent
12	A I possibly could have. I don't	12	of the shift rate per shift"?
13	remember exactly who did. A couple people	13	A Yes.
14	work on the valuation, so it could have been	14	Q And why is that?
15	someone else, but I reviewed it.	15	A Because the shift rate is the wage
16	Q You did review it?	16	in this situation.
17	A Yes.	17	Q Are you aware whether employees
18	Q And you did certify to it in the	18	that are covered by this Pension Fund are
19	Certificate of Actuarial Valuation, correct?	19	compensated for holidays?
20	A Yes.	20	A I'm not sure exactly what they're
21	Q And this is not the same language	21	compensated for.
22	that was used to describe the contribution	22	Q To the extent that they were paid
23	rate in the prior valuations that we looked	23	for holidays, that would be wages for
24	at, right?	24	something other than a shift worked,
25	A Correct.	25	correct?
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1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
1 2 3	ARBITRATION - VOLUME III MR. RICHMAN: Objection. She	1 2 3	ARBITRATION - VOLUME III Q If somebody is out on military
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1 ARBITRATION - VOLUME III 2 Fund	1 ARBITRATION - VOLUME III 2 this report
Fund. Those involved in the Fund knew how	tills report.
the contributions were made.	That contains the cover letter, correct?
5 Q But for those not working at the	5 A Yes.
Fund, the prior language, in your judgment,	6 Q And the cover letter is dated
7 was unclear?	February 7, 2014, correct?
8 A Could have been unclear. It was	8 A Yes.
clear to me, but could have been unclear to	9 Q So you drafted this revised
someone else.	language after The New York Times was
Q Did you consult with anyone at the	assessed withdrawal liability in this case,
Fund before changing this language from	correct?
"8 percent of wages" to "8 percent of shift	13 A Yes.
rate per shift"?	Q And you drafted this revised
A No. We're always tweaking language	language after The New York Times had
in the reports.	challenged the withdrawal liability
MR. RICHMAN: Just answer the	assessment in this case, correct?
18 question.	18 A Yes.
19 THE WITNESS: Oh, sorry.	Q And I take it that your testimony
20 BY MR. MILLER:	is, nonetheless, you just suddenly decided
Q Did you consult with Segal's	to revise this language, correct?
in-house counsel before changing the	MR. RICHMAN: Objection.
language?	"Suddenly decided to."
24 A No.	ARBITRATOR IRVINGS: It's cross
Q Let's turn to the second page of	examination.
Page 520	Page 521
Page 520 ARBITRATION - VOLUME III	Page 521 ARBITRATION - VOLUME III
1 ARBITRATION - VOLUME III 2 Go ahead.	1 ARBITRATION - VOLUME III 2 A Yes.
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¹ ARBITR	ATION - VOLUME III	1	ARBITRATION - VOLUME III
² clear.			tribution rate is unchanged from that
	in the room knew that the		ected in our prior valuation of
	rate was 8 percent of the wage		ercent of the shift rate per shift."
5 rate.		5	Do you see that?
_	room would that be?	6 A	
	you talked about the	$\frac{7}{9}$ Q	' 1
	aw the valuation, where you		ort's description of the contribution
9 talked about t		Tate	did not use the language about shift
	ong the people who talked	Tate	, did it? Correct.
	uation, they understood?	11 A 12 Q	
A 1 C3.	he 2013 Actuarial Valuation	13 all?	Not did it use the word shift at
_	you have expressed under	14 A	Correct.
	Rate is, in your judgment, the	15 O	
	ution formula, but in the		this expression "8 percent of the shift
	ns, you were not expressing	l	per shift" is the entire contribution
	itribution formula?		nula. And in the earlier versions, you
	ically, yes.		not express the entire contribution
	urn our attention		nula.
_	this document, SEGAL-000721.	21 A	
	u see the last sentence on	22 the	projected contributions are based on,
that page?		23 and	we were basically just saying that it's
A Yes.			on allocation of 8 percent of the
25 Q That la	ast sentence says, "The	²⁵ wag	ges. That's all that sentence is about.
			5.05
	Page 524		Page 525
1 ARRITR	Page 524	1	Page 525 ARRITRATION - VOLUME III
	RATION - VOLUME III	1 2 BY 1	ARBITRATION - VOLUME III
² Q That's	RATION - VOLUME III not quite what I asked you.	2 BY I	ARBITRATION - VOLUME III MR. MILLER:
Q That's What I	RATION - VOLUME III not quite what I asked you. asked you was to confirm	2 BY N	ARBITRATION - VOLUME III MR. MILLER: Q Can you turn your attention
Q That's What I that in use of	RATION - VOLUME III not quite what I asked you. asked you was to confirm the phrase "8 percent of the	2 BY N 3 4 st	ARBITRATION - VOLUME III MR. MILLER:
Q That's What I that in use of shift rate per	RATION - VOLUME III not quite what I asked you. asked you was to confirm the phrase "8 percent of the shift," you were expressing	2 BY N 3 4 st	ARBITRATION - VOLUME III MR. MILLER: Q Can you turn your attention icking with the white binder to
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1	ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III
2	I don't remember this first page.	with the plan year that commenced on June 1
3	I don't know.	³ 2012, you as the enrolled actuary certified
4	Q Take a look at Exhibit 1 and 2 of	that this Fund was in endangered status?
5	this document there entitled Alternative	5 A I think in 2012, yes.
6	Schedule and Default Schedule.	6 Q And as a consequence of your
7	Were you asked by the NMDU Fund to	7 certification, the Fund had to develop a
8	review these schedules that are attached to	8 funding improvement plan, correct?
9	this document?	9 A Yes.
10	A I think it's part of the funding	Q And that funding improvement plan
11	improvement plan. I think I was.	needed to have certain funding commitments
12	Q Have you ever heard of the term	that would allow the Pension Fund to exit
13	"yellow zone status"?	from endangered status, correct?
14	A Yes.	A Or to hit certain triggers, to hit
15	Q And have you ever heard of the term	a certain target, I should say, at the end
16	"endangered status"?	of a period.
17	A Yes.	17 Q Okay.
18	Q And what does the term "endangered	And you, in fact, advised the Fund
19	status" mean?	and helped the Fund to develop its funding
20	A The Pension Protection Act lays	improvement plan, correct?
21	out under the Pension Protection Act, one	A We prepared projections for them to
22	is to measure the status of the plan every	assist them in developing a funding
23	year. And if you hit certain triggers, you	improvement plan.
24	are considered in endangered status.	Q And those projections included
25	Q And am I correct that in connection	25 projections about necessary contributions to
		projections about necessary contributions to
	Page 528	Page 529
1	Page 528	Page 529
1	ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III meet the benchmark?	ARBITRATION - VOLUME III A I would think so.
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Page 530 Page 531 1 ARBITRATION - VOLUME III 1 ARBITRATION - VOLUME III 2 2 Q At least to the group of team at Segal? 3 3 individuals who would review the actuarial Α Yes. 4 4 report, correct? O And in undertaking those 5 5 projections of future employer To anyone -- my understanding is 6 6 everyone talks about it that way, and that's contributions, did you do that on the basis 7 7 how it was characterized. of percentage of wages or on the basis of 8 8 Q Do you know whether any employers shifts? 9 9 talked about it that way? Α The way we projected contributions 10 10 I have no idea. Well, some of was neither. We did not have the 11 11 them. Some of them are trustees, so I'm information on shifts or wages to do 12 12 sure they did. projections on contributions. 13 13 But you don't know, one way or the We would use information on the 14 14 prior historical contributions and make other? 15 15 Α I don't know each individual adjustments to those to project 16 16 contributions. person, no. 17 17 And I think, speaking of trustees, I'm going to switch gears now and 18 18 that you just testified that you in fact talk a little bit about withdrawal liability 19 19 advised the trustees regarding the estimates. 20 20 contribution levels that would be required In your practice, do you prepare 21 21 under these two schedules, correct? estimates of employers' potential withdrawal 22 We prepared projections where they 22 liability? 23 23 included these final numbers. For any fund or --Α 24 24 So these final numbers were based O Let's take it generally for any 25 25 on projections that were undertaken by your fund first. Page 532 Page 533 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 For any of the funds that you that if an employer has requested an 3 3 served, is it customary for you to prepare estimate of withdrawal liability, the 4 4 estimates of employers' potential withdrawal request needs to be responded to within six 5 5 liability? months? 6 6 Α We have prepared, yes. ARBITRATOR IRVINGS: How about 7 7 And in connection with this Fund give me a year. 8 8 here, the NMDU Fund, as I'll call it, did MR. MILLER: Okay. 9 9 you prepare estimates of employers' Since, say, 2009. 10 10 potential withdrawal liability? I'm not sure exactly of the Α 11 11 Α Yes. six-month period. 12 12 And isn't it true that ERISA, the Well, the law will speak for O Q 13 13 federal pension law, provides an employer itself. 14 with a right to obtain an estimate of 14 MR. RICHMAN: There we go. 15 withdrawal liability upon request? 15 Q Now, I want to talk a little bit 16 16 about not estimates of withdrawal liability Α Yes. 17 17 but actual calculations of withdrawal And isn't it also true that ERISA 18 18 requires that, if an employer has requested liability 19 19 an estimate of withdrawal liability, that ERISA sets forth rules for how a 20 request needs to be responded to within six 20 withdrawal liability amount must be 21 21 amortized, correct? months? 22 22 MR. RICHMAN: Objection. Can Α Yes. 23 23 you give us a time frame? And ERISA provides that in the 24 24 Q For the last several years, hasn't normal course, withdrawal liability amounts 25 25 it been the case that ERISA has required are to be amortized through quarterly

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	Page 534		Page 535
1	ARBITRATION - VOLUME III	2	ARBITRATION - VOLUME III
2	payments, correct?	3	withdrawal liability.
4	A Yes.		When preparing an estimate of
5	Q And can you summarize for me how	4 5	withdrawal liability, that estimate should
	the quarterly payment amount is calculated?	6	also include a payment schedule if the
6	A Based on the date of withdrawal,	7	employer requests one, correct?
7	you look back ten years at the contribution	8	A Yes.
8	base units and calculate the average		Q So in order for you to calculate a
9	three-year highest base units. And in the	9	withdrawal liability estimate with a payment
10	ten years prior to the date of withdrawal,	10	schedule, you would need CBU information and
11	the actual withdrawal date, you use the	11	contribution rate information, correct?
12	highest contribution rate.	12	A Yes.
13	And the annual payment is the	13	Q By the way, are employers allowed,
14	highest base units times the highest	14	at their discretion, to pay their withdrawal
15	contribution rate, highest average base	15	liability in a lump sum?
16	units times contribution rate.	16	A I think the law allows you to pay
17	Q And you would divide that number by	17	it upfront. I know you can settle a
18	four to get your quarterly payment amount,	18	lump-sum payment.
19	correct?	19	Q The payment schedule to amortize
20	A Correct.	20	withdrawal liability may be as long as
21	Q So am I correct that CBU	21	20 years, correct?
22	information is crucial in preparing a	22	A At most, 20 years, under a regular
23	payment schedule?	23	withdrawal.
24	A Yes.	24	Q So is it often the case that
25	Q Now back to preparing estimates of	25	withdrawal liability assessments, if not
	Page 536		Page 537
1		1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
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Page 538	Page 539
1 ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
2 ARBITRATOR IRVINGS: But where	ago that in fact you have prepared estimates
are we going with this?	of withdrawal liability when requested by
4 MR. MILLER: I simply would	employers in connection with this Fund?
5 like her, Ms. Egan, to confirm that	5 A Yes.
based on her experience the	6 Q And can you summarize for us the
7 withdrawal liability payment	7 process that you employed when asked to
8 schedules may result in long-term	8 prepare an estimate?
9 obligations of the withdrawing	9 ARBITRATOR IRVINGS: For this
employer.	¹⁰ Fund?
11 ARBITRATOR IRVINGS: As long as	MR. MILLER: For this Fund,
20 years. Yes?	12 yes.
BY MR. MILLER:	A We asked for the data needed and
14 Q Yes?	then we prepared the calculation. And in the ordinary course, what
15 A The most, 20 years.	7 and in the ordinary course, what
16 Q Okay. 17 MR. MILLER: Then I'll move on.	data would you request from the rund:
18 A Not necessarily it could be one	A The obligated contribution history of the employer and any information needed
19 year. Maybe it could be one year. It	to set up the pools, if they have them set
doesn't have to be 20 years. That's the	up, the current pool.
maximum.	Each year you're setting up a pool.
Q Let me focus on estimates of	Q Ms. Egan, let me draw your
withdrawal liability that you have made in	attention to Exhibit 14 again in that white
connection with the Pension Fund here.	²⁴ binder.
I think you did testify a moment	This is a letter dated January 22,
	
Page 540	Page 541
Page 540 ARBITRATION - VOLUME III	Page 541 1 ARBITRATION - VOLUME III
1 ARBITRATION - VOLUME III 2 2009 from R. Anthony Benton of The New York	ARBITRATION - VOLUME III documents in this case?
1 ARBITRATION - VOLUME III 2 2009 from R. Anthony Benton of The New York 3 Times to the Pension Fund.	1 ARBITRATION - VOLUME III 2 documents in this case? 3 A Yes.
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Page 542	Page 543
ARBITRATION - VOLUME III And, again, that's Exhibit 56. And Ms. Egan, this document staples together several letters, so let me just ask you to draw your attention to the second page of this document which has the stamp at the bottom NYT-001963. A 1963, okay. Q Do you see that at the bottom. Why don't you take a moment and take a look at that letter. A Okay. Q So this appears to be another request by The New York Times for an estimate of withdrawal liability including CBU information which is requested in Paragraph 2. A Okay. Q And are you familiar with this	ARBITRATION - VOLUME III we did a couple of them but I thought it was later. Q And I take it that if a request strike that. I take it that if you had prepared an estimate in response to this request and it was in Segal's files, you would have Segal would have produced it in this case? A Yes. If we had it. If we could find it. Q I'm sorry. Now I need you to turn your attention back to the white binder and Exhibit 4. This should be a letter dated August 15, 2011, again to the Fund, from a man named James Dexter. Do you recall seeing this letter? A They all look alike after a while.
letter? A No. Q Do you recall having prepared an estimate of The New York Times' withdrawal liability in response to this letter? A I don't recall preparing. I know	I don't remember. I don't remember if I've seen this letter. Q Now sticking with this white binder, why don't you just go ahead and move to Exhibit 18. A Okay.
ARBITRATION - VOLUME III Q Exhibit 18 is a memorandum from you and Mr. Urbank to the Fund director of the NMDU Fund, Mr. Schwartz, dated June 25, 2012, correct? A Yes. Q And attached to this letter is an estimate of withdrawal liability for The New York Times for withdrawal in the year ended May 31, 2012, correct? A Yes. Q Did you prepare the report that is attached to the memorandum? A Yes. Q And if you turn your attention to Page 15 of the report, which has a label entitled SEGAL-000032, you'll see there is a payment schedule that you calculated in connection with this estimate of withdrawal liability. Do you see that? A Yes. Q And you calculated a payment of roughly 952,000 per quarter in connection with this withdrawal liability estimate,	ARBITRATION - VOLUME III correct? A Yes. Q And now I'd like to draw your attention to the next page, Page 16. And what I'd like to do is explore with you how you came up with that quarterly payment amount of roughly \$952,000. A Sorry? Q So I'd like to explore with you how you calculated that number. A Oh, okay. Okay. Q So under the heading Contribution Rates, you'll see that there are a variety of percentages that are listed. And then under the heading Effective Date, it indicates roughly a ten-year period from July 1, '99 through January 1, 2009, correct? A Yes. Q And the highest contribution rate listed there is 8 percent, correct? A Eight percent of wage. Q And then under the column Total Wages for The New York Times, there are

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ten years' worth of wages listed in that column, correct? A Yes. Q And the three consecutive years that are the highest would be for the years 2003, '4 and '5, correct? A Yes. Q So am I correct that the way you did the math was to take the average for the high three-year period of total wages, multiply that by 8 percent and divide by 4? A That's how we estimated it. Q Right. And that's how you came up with roughly \$952,000 per quarter, correct?' A That's how it was estimated. Q But the answer to my question is yes, correct? A Yes. Q Than's how you did the math, correct? A Yes. Q That's how it was a setimated in determining a payment schedule you need a contribution rate, correct? A Pers. Q And that Spercent proced you came up with the payment. Q But the answer to my question is yes, correct? A Yes. Q That's how you did the math, correct? A That's how you did the math, correct? A Yes. Q Thank's how you did the math, correct? A Yes. Q Thank you. A Yes. Q And you setimated annual payment of \$952,000, correct? A We used – didn't necessarily represent the contribution rate, but if represented – it was a way to get to an annual payment. Q And the spercent proceding the math for that volumed annual payment. Q And the spercent proceding the proceding		Page 546		Page 547
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Page 550	Page 551
ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III
Q Let me ask the question another	answer.
3 way.	3 It looks like it played that role,
Am I correct that in order to	but, indirectly, it wasn't.
estimate a payment schedule, you need CBU	Q So essentially, your answer is yes,
6 information? You previously testified to	total wages played the role of CBUs,
7 that, correct? 8 A You need CBU and contribution rate	concet:
1 Tou need CBC and continuation rate	i iii just lookiiig ioi a yes oi iio
mioritation.	answer.
7 ma in connection with this	Ti tooks that way.
calculation, total wages played the fole of	Q Hank you.
CBC5, correct:	Bid you any where in this document
71 713 dii estimate.	indicate your view that shifts are CBOs!
Q I know it's an estimate.	11 110.
But in this calculation answer	Q Did you indicate anywhere in this
my question. In this ediculation, total	document that CBUs are not total wages? A No.
wages played the role of CBUs, correct? Yes or no?	18 Q So it would have been reasonable
	for a reader of this payment schedule to
A I'm not sure how to explain this. THE WITNESS: Can I explain or	conclude that CBUs are total wages, correct?
do I have to say yes or no?	21 MR. RICHMAN: Objection.
22 ARBITRATOR IRVINGS: You have	22 ARBITRATOR IRVINGS: Sustained.
to say yes or no.	You can argue it.
Ron will ask you to explain.	24 BY MR. MILLER:
A It's hard when it's not a yes or no	Q Let's turn to the note at the
11 It's flate when it's not a yes of no	Q Est's turn to the note at the
Page 552	Page 553
	1 4 9 6 6 6 6
¹ ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III
bottom of this page.	ARBITRATION - VOLUME III memorandum and the estimate that's attached
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bottom of this page. The note says that "Contributions and contribution rate information for The New York Times was received from the Fund office." And right above that note is that column, that vertical column entitled Contribution Rates. Do you see that? A Yes. Q And the contribution rate information that's under that column, that was received from the Fund office, correct? A The allocation of the rate, yes. The 6 percent, the 8 percent. Q That was received from the Fund office, correct? Yes or no? A Yes. Q Now I'd like to turn your attention to Exhibit 3. And why don't you take a moment to	ARBITRATION - VOLUME III memorandum and the estimate that's attached to that document? A Yes. Q And this is a similar estimate of withdrawal liability that you prepared for The New York Times in July of 2013, correct? A Yes. Q And if you turn your attention to Page 15 of this exhibit, which is labeled FUND-0000609, you see again there is a payment schedule that's set forth, correct? A Yes. Q And this payment schedule indicates a quarterly payment of approximately 952,000? A Yes. ARBITRATOR IRVINGS: Can we agree that the colloquy will be the same? MR. MILLER: Yes. Let me ask that question to get it done.
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	Page 554		Page 555
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	same as the payment schedule analysis you	2	Q Can you identify this document?
3	prepared for the June 2012 estimate?	3	A I don't know that I've seen this,
4	A Yes.	4	this actual document.
5	Q So am I correct that in the span of	5	Q Okay. But let me draw your
6	13 months from June 2012 to July 2013, you	6	attention to the portion of this document
7	used 8 percent as the contribution rate in	7	that's identified on the bottom right with
8	preparing estimates of a payment schedule	8	the Bates stamp FUND-0000727.
9	for withdrawal liability for The Times?	9	Do you see that?
10	A At those two points in time, I did.	10	It's about midway through the
11	Q Thank you.	11	document.
12	And in both instances, there's	12	A Okay.
13	nothing to alert the reader that the	13	Q Are you familiar with this portion
14	contribution formula was not a percentage of	14	of the document, the calculation of
15	wages, correct?	15	withdrawal liability?
16	A It appears not.	16	A Yes.
17	Q And, similarly, there's nothing in	17	Q And you prepared this portion of
18	the document alerting the reader that CBUs	18	the document, correct?
19	are not total wages, correct?	19	A Yes.
20	A Yes.	20	Q And as far as you are aware, this
21	Q Now, can you turn your attention to	21	is the actual assessment of partial
22	Exhibit 1.	22	withdrawal liability that was made against
23	Take a moment to review that	23	The New York Times in this case?
24	document, please.	24	A Yes. I think so.
25	A Okay.	25	Q And are you aware that the basis
	Page 556		Page 557
1	Page 556 ARBITRATION - VOLUME III	1	Page 557 ARBITRATION - VOLUME III
1 2	ARBITRATION - VOLUME III	1 2	
	_		ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct?	2	ARBITRATION - VOLUME III formula that's mandated by ERISA to
2	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes.	2 3 4 5	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on
2 3 4 5 6	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment	2 3 4 5 6	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes.
2 3 4 5 6 7	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes.	2 3 4 5 6 7	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for
2 3 4 5 6 7 8	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes.	2 3 4 5 6 7 8	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you?
2 3 4 5 6 7 8	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard	2 3 4 5 6 7 8	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No.
2 3 4 5 6 7 8 9	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743.	2 3 4 5 6 7 8 9	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts?
2 3 4 5 6 7 8 9 10	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there?	2 3 4 5 6 7 8 9 10	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct.
2 3 4 5 6 7 8 9 10 11	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes.	2 3 4 5 6 7 8 9 10 11	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes. Q And let's turn your attention to Roman Numeral VIII, the heading Payment Schedule for New York Times' Partial Withdrawal during Year Ended May 31, 2012. Do you see that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the calculation, you took the average number of shifts over the high ten-year period prior to the plan year of withdrawal and multiplied that by \$23.75. Then you multiplied that, I take it, by a partial
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes. Q And let's turn your attention to Roman Numeral VIII, the heading Payment Schedule for New York Times' Partial Withdrawal during Year Ended May 31, 2012. Do you see that? A Yes. Q And this Section VIII sets forth	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the calculation, you took the average number of shifts over the high ten-year period prior to the plan year of withdrawal and multiplied that by \$23.75. Then you multiplied that, I take it, by a partial withdrawal fraction and divided by 4? A Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes. Q And let's turn your attention to Roman Numeral VIII, the heading Payment Schedule for New York Times' Partial Withdrawal during Year Ended May 31, 2012. Do you see that? A Yes. Q And this Section VIII sets forth the calculations that lead to your	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the calculation, you took the average number of shifts over the high ten-year period prior to the plan year of withdrawal and multiplied that by \$23.75. Then you multiplied that, I take it, by a partial withdrawal fraction and divided by 4? A Yes. Q And if you look at the final page
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes. Q And let's turn your attention to Roman Numeral VIII, the heading Payment Schedule for New York Times' Partial Withdrawal during Year Ended May 31, 2012. Do you see that? A Yes. Q And this Section VIII sets forth the calculations that lead to your determination of the amount of the quarterly	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the calculation, you took the average number of shifts over the high ten-year period prior to the plan year of withdrawal and multiplied that by \$23.75. Then you multiplied that, I take it, by a partial withdrawal fraction and divided by 4? A Yes. Q And if you look at the final page of this document, which is FUND-0000757, I
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes. Q And let's turn your attention to Roman Numeral VIII, the heading Payment Schedule for New York Times' Partial Withdrawal during Year Ended May 31, 2012. Do you see that? A Yes. Q And this Section VIII sets forth the calculations that lead to your determination of the amount of the quarterly payment of being approximately \$923,000,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the calculation, you took the average number of shifts over the high ten-year period prior to the plan year of withdrawal and multiplied that by \$23.75. Then you multiplied that, I take it, by a partial withdrawal fraction and divided by 4? A Yes. Q And if you look at the final page of this document, which is FUND-0000757, I take it those are the historical shift
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes. Q And let's turn your attention to Roman Numeral VIII, the heading Payment Schedule for New York Times' Partial Withdrawal during Year Ended May 31, 2012. Do you see that? A Yes. Q And this Section VIII sets forth the calculations that lead to your determination of the amount of the quarterly payment of being approximately \$923,000, correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the calculation, you took the average number of shifts over the high ten-year period prior to the plan year of withdrawal and multiplied that by \$23.75. Then you multiplied that, I take it, by a partial withdrawal fraction and divided by 4? A Yes. Q And if you look at the final page of this document, which is FUND-0000757, I take it those are the historical shift numbers you used in the calculation?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME III for this assessment of partial withdrawal liability was that CBUs had declined by more than 70 percent, correct? A That's my understanding, yes. Q And did you calculate a payment schedule in connection with this assessment? A Yes. Q And why don't you in that regard turn to FUND-0000743. Page 16. Are you there? A Yes. Q And let's turn your attention to Roman Numeral VIII, the heading Payment Schedule for New York Times' Partial Withdrawal during Year Ended May 31, 2012. Do you see that? A Yes. Q And this Section VIII sets forth the calculations that lead to your determination of the amount of the quarterly payment of being approximately \$923,000,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III formula that's mandated by ERISA to calculate a payment schedule depends on historical CBU levels and contribution rate, correct? A Yes. Q But here, you did not use wages for CBUs, did you? A No. Q Instead, you used shifts? A Correct. Q So quickly just to walk through the calculation, you took the average number of shifts over the high ten-year period prior to the plan year of withdrawal and multiplied that by \$23.75. Then you multiplied that, I take it, by a partial withdrawal fraction and divided by 4? A Yes. Q And if you look at the final page of this document, which is FUND-0000757, I take it those are the historical shift

	Page 558		Page 559
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	numbers reflected on that page?	2	Q And do you recall what information
3	A From the Fund office.	3	you were missing?
4	Q And did you also receive from the	4	A I believe we didn't have the
5	Fund office that \$23.75 figure you used in	5	contribution rate information.
6	the calculations?	6	Q You had the shift information, just
7	A Yes.	7	not the shift rate information, correct?
8	Q And you agree that you calculated	8	A That's my recollection.
9	this payment schedule differently from how	9	Q Can you turn your attention to
10	you had done the estimates, the last one	10	Exhibit 42.
11	being less than 60 days earlier, correct?	11	Ms. Egan, have you ever seen this
12	A Yes.	12	cover e-mail and the attachments to it?
13	Q Why did you change your approach?	13	A Yes.
14	A The first one was an estimate and	14	Q And, in fact, you're a recipient of
15	we didn't have all the information to do it.	15	this e-mail, correct?
16	And the second one was an actual calculation	16	A Yes.
17	and we were able to get the information to	17	Q Do you recall receiving this e-mail
18	do it.	18	from Ms. Albergo, Barbara A., at the Fund
19	Q So in connection with the earlier	19	office?
20	calculations, you were missing certain	20	A Yes.
21	information that you needed and used in	21	Q This e-mail also copies an
22	performing the payment schedule or	22	oleary@kmm.com.
23	calculating the payment schedule for the	23	Who does that e-mail address belong
24	actual assessment, correct?	24	to, if you are aware?
25	A That's my recollection.	25	A That's one of the counsels of the
	•		
	Page 560		Page 561
1	_	1	-
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III NMDU.	2	ARBITRATION - VOLUME III Q And had you previously asked for
2	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was		ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection
2	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail?	2 3	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated
2 3 4	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied	2 3 4	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability?
2 3 4 5	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her.	2 3 4 5	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did.
2 3 4 5 6	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was	2 3 4 5 6 7	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the
2 3 4 5 6 7	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was sent on July 31st, and this was two weeks	2 3 4 5 6	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the information that you did not have in
2 3 4 5 6 7 8	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was sent on July 31st, and this was two weeks after or roughly two weeks after you had	2 3 4 5 6 7 8	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the information that you did not have in connection with those prior estimates that
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2 3 4 5 6 7 8 9 10 11 12 13	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was sent on July 31st, and this was two weeks after or roughly two weeks after you had completed the estimate of payment schedule using wages as CBUs, correct? A Yes. Q And, Ms. Egan, can you briefly describe the information that's attached to	2 3 4 5 6 7 8 9 10 11 12 13	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the information that you did not have in connection with those prior estimates that you prepared, correct? A As far as I recall, yes. Q In preparing calculations of withdrawal liability for employers of this Fund, do you typically receive this did
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was sent on July 31st, and this was two weeks after or roughly two weeks after you had completed the estimate of payment schedule using wages as CBUs, correct? A Yes. Q And, Ms. Egan, can you briefly describe the information that's attached to this e-mail? A It's my understanding that the information shows the contribution rates to the Welfare Fund and the Pension Fund at	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the information that you did not have in connection with those prior estimates that you prepared, correct? A As far as I recall, yes. Q In preparing calculations of withdrawal liability for employers of this Fund, do you typically receive this did you typically receive this kind of rate information? A Not always. Not typically. Q Can you think of any reason why it
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was sent on July 31st, and this was two weeks after or roughly two weeks after you had completed the estimate of payment schedule using wages as CBUs, correct? A Yes. Q And, Ms. Egan, can you briefly describe the information that's attached to this e-mail? A It's my understanding that the information shows the contribution rates to the Welfare Fund and the Pension Fund at different effective dates for the different	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the information that you did not have in connection with those prior estimates that you prepared, correct? A As far as I recall, yes. Q In preparing calculations of withdrawal liability for employers of this Fund, do you typically receive this did you typically receive this kind of rate information? A Not always. Not typically. Q Can you think of any reason why it would have been difficult for the Fund
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was sent on July 31st, and this was two weeks after or roughly two weeks after you had completed the estimate of payment schedule using wages as CBUs, correct? A Yes. Q And, Ms. Egan, can you briefly describe the information that's attached to this e-mail? A It's my understanding that the information shows the contribution rates to the Welfare Fund and the Pension Fund at different effective dates for the different types of shifts.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the information that you did not have in connection with those prior estimates that you prepared, correct? A As far as I recall, yes. Q In preparing calculations of withdrawal liability for employers of this Fund, do you typically receive this did you typically receive this kind of rate information? A Not always. Not typically. Q Can you think of any reason why it would have been difficult for the Fund office to have provided you these sheets at
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III NMDU. Q And do you know why Ms. O'Leary was copied on the e-mail? A I don't know why Barbara copied her. Q And this e-mail indicates it was sent on July 31st, and this was two weeks after or roughly two weeks after you had completed the estimate of payment schedule using wages as CBUs, correct? A Yes. Q And, Ms. Egan, can you briefly describe the information that's attached to this e-mail? A It's my understanding that the information shows the contribution rates to the Welfare Fund and the Pension Fund at different effective dates for the different types of shifts. Q So this Pension Fund information, was this the information that you needed to calculate the payment schedule for the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III Q And had you previously asked for this information from the Fund in connection with the two prior estimates you calculated of withdrawal liability? A My recollection is that we did. Q So just to confirm, this is the information that you did not have in connection with those prior estimates that you prepared, correct? A As far as I recall, yes. Q In preparing calculations of withdrawal liability for employers of this Fund, do you typically receive this did you typically receive this kind of rate information? A Not always. Not typically. Q Can you think of any reason why it would have been difficult for the Fund office to have provided you these sheets at an earlier date? A I have no idea what's difficult

	P F(0		P FC0
	Page 562		Page 563
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	This appears to be rate information	2	A I have no idea.
3	for, it says in the first sentence, "day	3	Q To the extent that they are, there
4	shifts of March 31, 2013."	4	would be two additional contribution rates
5	Do you see that at the top?	5	on top of the eight contribution rates
6	A Yeah.	6	applicable to The New York Times, correct?
7	Q And am I correct that for the	7	A Why two? Why two?
8	Pension Fund, eight different wage rates are	8	Q Strike that. Let me rephrase the
9	depicted on this sheet?	9	question.
10	A For The New York Times?	10	To the extent that an employee who
11	Q For The New York Times, correct.	11	might use specialized machinery such as a
12	A Yes, that's what I see is eight	12	forklift is paid a higher shift wage than
13	rates for the Pension Fund.	13	the rates listed on this sheet, that would
14	Q So is it your understanding that	14	be an additional contribution rate
15	The New York Times has eight different	15	applicable to The New York Times, correct?
16	contribution rates that applied to its	16	A If that's how they make the
17	pension obligations in any given year?	17	contributions to the Fund, you would think
18	A That's my understanding by looking	18	so. I don't know otherwise.
19	at this.	19 20	Q You don't know one way or the
20	Q Thank you.	21	other?
21 22	Are you aware whether employees who	22	A Right.
	work shifts that might use specialized	23	Q Do you know whether there are any
23	machinery, such as a forklift, are paid	23	employees who participate in this Fund who
24 25	higher shift rates, shift wages than the	25	are paid on a salary rather than a per-shift
23	rates listed on these sheets?	23	basis?
	Page 564		Page 565
1		1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III A I have no idea.		ARBITRATION - VOLUME III does not appear to be that way, correct?
2	ARBITRATION - VOLUME III A I have no idea. Q To the extent that a person that is	2	ARBITRATION - VOLUME III does not appear to be that way, correct? A It doesn't specify.
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2 3 4	ARBITRATION - VOLUME III A I have no idea. Q To the extent that a person that is covered by this Fund were to be paid a salary rather than on a per-shift basis,	2 3 4	ARBITRATION - VOLUME III does not appear to be that way, correct? A It doesn't specify. Whether they need to use one of these rates, I wouldn't know.
2 3 4 5	ARBITRATION - VOLUME III A I have no idea. Q To the extent that a person that is covered by this Fund were to be paid a salary rather than on a per-shift basis, does this rate sheet reflect the	2 3 4 5	ARBITRATION - VOLUME III does not appear to be that way, correct? A It doesn't specify. Whether they need to use one of these rates, I wouldn't know. Q Okay. Let's turn to a different
2 3 4 5 6	ARBITRATION - VOLUME III A I have no idea. Q To the extent that a person that is covered by this Fund were to be paid a salary rather than on a per-shift basis,	2 3 4 5 6	ARBITRATION - VOLUME III does not appear to be that way, correct? A It doesn't specify. Whether they need to use one of these rates, I wouldn't know. Q Okay. Let's turn to a different subject. Let's talk about investment return
2 3 4 5 6 7	ARBITRATION - VOLUME III A I have no idea. Q To the extent that a person that is covered by this Fund were to be paid a salary rather than on a per-shift basis, does this rate sheet reflect the contributions for such a salaried	2 3 4 5 6 7	ARBITRATION - VOLUME III does not appear to be that way, correct? A It doesn't specify. Whether they need to use one of these rates, I wouldn't know. Q Okay. Let's turn to a different subject. Let's talk about investment return assumptions.
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	Daga Fee		Dage 567
- 4	Page 566	1	Page 567
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
3	Can you describe what an investment	2 3	that's derived from looking at historical
4	return assumption is? A That is used for funding	4	data and expected market current and recent market returns.
5	A That is used for funding valuations?	5	We use a building block approach
6	Q That's correct.	6	where we reflect or take into account
7	A It is an assumption that is used to	7	inflation expectations or any anticipated
8	reflect how money will how much you're	8	risk premiums on each of the asset classes
9	expecting to receive on your return on your	9	in the portfolio.
10	assets.	10	We take into account the target
11	Q And these would be the assets at	11	asset allocation of the fund.
12	which the Pension Fund strike that.	12	Q So I take it you are familiar with
13	These would be the investments that	13	the term "building block approach" or
14	the Pension Fund has made with its assets,	14	"building block method," correct?
15	correct?	15	A Yes.
16	A Yes.	16	Q And is it fair to say that you
17	Q Do you know what investment return	17	applied the building block method in
18	assumption you used for the NMDU Fund for	18	connection with the decision to use
19	funding purposes?	19 20	7.5 percent as the investment return
20	A Currently?	21	assumption for this Fund?
21 22	Q Yes.	22	A Yes.
23	A Seven and a half percent.	23	Q And is it fair to say that the
23	Q And how did you select that	24	building block method takes into account the Fund's actual assets and actual targeted
25	investment return assumption? A Well, it's a long-term assumption	25	asset allocation, correct?
	A Well, it's a long-term assumption		abbet unioution, correct:
	Page 568		Page 569
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2			
	A Yes.	2	A In most cases.
3	Q And is it fair to say that the	3	Q And am I correct that for
4	Q And is it fair to say that the 7.5 percent assumption represents your best	3 4	Q And am I correct that for multiemployer pension plans for ongoing
4 5	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets	3 4 5	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment
4 5 6	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long	3 4 5 6	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount
4 5 6 7	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term?	3 4 5 6 7	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities?
4 5 6 7 8	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes.	3 4 5 6 7 8	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases.
4 5 6 7 8 9	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding	3 4 5 6 7 8	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the
4 5 6 7 8 9	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a	3 4 5 6 7 8 9	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for
4 5 6 7 8 9 10	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a pension plan's liabilities as an enrolled	3 4 5 6 7 8 9 10	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for this Pension Fund to present value this
4 5 6 7 8 9 10 11	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a pension plan's liabilities as an enrolled actuary for a multiemployer plan, correct?	3 4 5 6 7 8 9	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for this Pension Fund to present value this Pension Fund's liabilities for ongoing
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4 5 6 7 8 9 10 11 12 13	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a pension plan's liabilities as an enrolled actuary for a multiemployer plan, correct? A Yes. Q And a critical assumption in present valuing a pension plan's liabilities	3 4 5 6 7 8 9 10 11 12 13 14	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for this Pension Fund to present value this Pension Fund's liabilities for ongoing funding purposes? A Currently, yes. Q And, indeed, you've done so for the
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4 5 6 7 8 9 10 11 12 13 14 15 16	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a pension plan's liabilities as an enrolled actuary for a multiemployer plan, correct? A Yes. Q And a critical assumption in present valuing a pension plan's liabilities	3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for this Pension Fund to present value this Pension Fund's liabilities for ongoing funding purposes? A Currently, yes. Q And, indeed, you've done so for the last number of years, correct?
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a pension plan's liabilities as an enrolled actuary for a multiemployer plan, correct? A Yes. Q And a critical assumption in present valuing a pension plan's liabilities is the discount rate used to arrive at that present value, correct? A Yes. Q And, indeed, isn't that the most critical of the assumptions that an enrolled actuary applies in determining the present	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for this Pension Fund to present value this Pension Fund's liabilities for ongoing funding purposes? A Currently, yes. Q And, indeed, you've done so for the last number of years, correct? MR. RICHMAN: Objection. What's the number of years? BY MR. MILLER: Q For how many years have you applied the Fund's investment return assumption as
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a pension plan's liabilities as an enrolled actuary for a multiemployer plan, correct? A Yes. Q And a critical assumption in present valuing a pension plan's liabilities is the discount rate used to arrive at that present value, correct? A Yes. Q And, indeed, isn't that the most critical of the assumptions that an enrolled actuary applies in determining the present value of a pension fund's liabilities? A If you mean critical, has the most effect on the liabilities, yes.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for this Pension Fund to present value this Pension Fund's liabilities for ongoing funding purposes? A Currently, yes. Q And, indeed, you've done so for the last number of years, correct? MR. RICHMAN: Objection. What's the number of years? BY MR. MILLER: Q For how many years have you applied the Fund's investment return assumption as the discount rate to value the Fund's liabilities? A Many years.
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q And is it fair to say that the 7.5 percent assumption represents your best estimate of how the Pension Fund's assets here will on average perform over the long term? A Over a long-term period, yes. Q For ongoing regular funding purposes, you need to annually value a pension plan's liabilities as an enrolled actuary for a multiemployer plan, correct? A Yes. Q And a critical assumption in present valuing a pension plan's liabilities is the discount rate used to arrive at that present value, correct? A Yes. Q And, indeed, isn't that the most critical of the assumptions that an enrolled actuary applies in determining the present value of a pension fund's liabilities? A If you mean critical, has the most	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q And am I correct that for multiemployer pension plans for ongoing funding purposes, the plan's investment return assumption is used as the discount rate to present value liabilities? A In most cases. Q And did you in fact use the 7.5 percent investment return assumption for this Pension Fund to present value this Pension Fund's liabilities for ongoing funding purposes? A Currently, yes. Q And, indeed, you've done so for the last number of years, correct? MR. RICHMAN: Objection. What's the number of years? BY MR. MILLER: Q For how many years have you applied the Fund's investment return assumption as the discount rate to value the Fund's liabilities?

Page 570 Page 571 1 ARBITRATION - VOLUME III 1 ARBITRATION - VOLUME III 2 2 A At least ten. For valuation Q And you'll see toward the middle of 3 3 purposes. the page there is a line that reads "Net 4 4 Q Can you recall any period during investment return, 7.5 percent." 5 5 which you've been the enrolled actuary for Do you see that? 6 6 this Fund in which you did not use the Α Yes. 7 7 Fund's investment return assumption as the 0 And that 7.5 percent indeed 8 8 discount rate to value its liabilities? memorializes that as the enrolled actuary 9 9 No. Off the top of my head, no. for this Fund for this valuation report 10 10 And am I correct that that discount you're using 7.5 percent as the investment O 11 11 rate assumption, which is also the return assumption and discount rate, 12 12 investment return assumption, has been correct? 13 13 reflected in the various annual Actuarial Α 14 14 Valuation Reports that you've prepared for O Actuarially, why does it make sense 15 15 the Pension Fund over the years? to use the plan's investment return 16 16 assumption as the discount rate to present Α Yes. 17 17 Q In that regard, let's turn our value liabilities for funding purposes? 18 18 attention back to Exhibit 25 which is the The liabilities are on a long-term 19 19 Actuarial Valuation Report as of June 1, basis, and the investment return, what you 20 20 2011. are expecting on your assets on a long-term 21 21 basis, are similar, so it would make sense So turning back to Exhibit 25, why 22 22 if they are, they would be the same. don't you draw your attention to the page 23 23 that's been marked SEGAL-0000621. Is it fair to say they're 24 24 Are you on Page 000621? essentially the flip side of the same coin? 25 25 Α Yes. Not always. Page 572 Page 573 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 actuarial assumptions when you developed the O In most cases, yes? 3 3 In this case, yes. Fund's investment return assumption and A 4 4 discount rate? Thank you. 5 5 Yes. For that valuation that we Am I correct that the actuarial Α 6 6 were looking at. profession has set forth standards of 7 7 For the 2011? practice on the issue of selecting Q 8 8 investment return assumptions and discount Α For the 2011 valuation, yes. 9 9 rates, correct? And is this the ASOP that guided 10 10 your actuarial assumptions when you Yes. A 11 11 calculated The Times' withdrawal liability And in preparing your Actuarial O 12 12 in 2013? Valuation Reports and developing an 13 13 investment return assumption and discount A Yes. 14 14 rate, you applied those standards of O Can you turn your attention to 15 actuarial practice, correct? 15 Section 3.6, please, which is entitled 16 16 Selecting an Investment Return Assumption Α Yes. 17 17 and Discount Rate. Can you turn your attention to 18 18 Exhibit 10, please. Again in the white And can you please review the first 19 19 binder. three paragraphs under that heading. 20 And are you familiar with this 20 Α Okay. 21 document, Ms. Egan? 21 Q Do you agree with the actuarial 22 22 principles that are set forth in those two, Yes. A 23 23 And is this the ASOP, Actuarial three paragraphs under the heading Selecting O 24 24 an Investment Return Assumption and Discount Standard of Practice? 25 25 Is this the ASOP that guided your Rate?

Page 574 Page 575 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 Α In most cases, yes. to provide exceptions to the general 3 3 O What would be the instances in principle? 4 4 which you would not apply the principles A Yes 5 5 that are set forth in those paragraphs? Do you believe that the exceptions 6 6 Which specific principle are you that are articulated in that sentence apply 7 7 talking about? in the case of calculating withdrawal 8 8 Fair question. Let's turn to the liability in connection with a pension plan 9 9 first big paragraph, the one that reads, that has a pool of invested assets? 10 10 "The discount rate is used to determine the Repeat the question. 11 11 present value of expected future plan (Requested portion of record read: 12 12 payments. Generally, the appropriate "Q. Do you believe that the 13 13 discount rate is the same as the investment exceptions that are articulated in that 14 14 sentence apply in the case of calculating return assumption." 15 15 Let me stop there and ask you. withdrawal liability in connection with a 16 Do you agree with that actuarial 16 pension plan that has a pool of invested 17 17 principle? assets?") 18 18 Yes. Α (End of read-back.) 19 19 And the next sentence goes on to MR. RICHMAN: I'm going to O 20 20 say, "But for some purposes such as SFAS 21 21 Number 87 or unfunded plan valuations, the What exceptions are we talking 22 22 about because I'm not sure we're talking discount rate would be selected 23 23 independently of the plan's investment about the same thing. 24 return assumption, if any." 24 MR. MILLER: Well, let me ask 25 25 So do you understand that sentence the witness. Page 577 Page 576 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 BY MR. MILLER: tells me that there are exceptions. 3 3 Q Let's focus on the sentence that And one of them is in connection 4 4 says, "For some purposes such as SFAS with FAS requirements, correct? 5 5 Number 87 or unfunded plan valuations, the One of them, based on this, yes. Α 6 6 discount rate may be selected independently And the other based on this 7 7 the plan's investment return assumption." sentence is in connection with unfunded plan 8 8 So let me ask you: In your valuations, correct? 9 9 judgment, does this sentence articulate any A Right. That looks like the two 10 10 exceptions to the general principle that you examples, ves. 11 11 use the investment return assumption as the Right. And my question was: Do 12 12 discount rate, this sentence here? either of those exceptions have any 13 13 A That sentence gives examples of application in calculating withdrawal 14 exceptions. 14 liability for a pension plan that has 15 Okay. And what are those examples? 15 invested and thus funded assets? Q 16 16 If you are doing FAS 87 --I'm not sure what one has to do A 17 17 And let me stop right there. with the other. 18 18 In other words, if the financial In other words, they have no 19 19 accounting standards would mandate a application to the calculation of withdrawal 2.0 different discount rate, then this sentence 20 liability, these two exceptions. 21 authorizes the actuary to use the 21 Strike that. Let me articulate FAS-mandated discount rate; is that fair? 22 22 better. 23 23 The sentence before it authorizes Am I correct that these two 24 24 that generally the appropriate discount rate exceptions have no application to the 25 25 is the same as investment return. That calculation of withdrawal liability?

Page 578 Page 579 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 Those particular exceptions. purchase annuities, you would pay a certain 3 3 interest rate for them. And we use the Do not apply -- have any 4 4 application to the calculation of withdrawal Pension Benefit Guaranty Corporation 5 5 publishers' rates that we use that are in liability, correct? 6 6 Correct. line with use information for insurance 7 7 companies for purchasing annuities. I take it you you've heard of the Q 8 8 term "Segal blend." So we calculate the liability based 9 9 What is your understanding of the on these rates. 10 10 concept Segal blend? As far as the funding rate, we 11 11 Segal blend is -- I use as my best don't use the funding rate to come up with 12 12 estimate to calculate the unfunded vested the liability. It's my view that the 13 13 benefits for withdrawal liability purposes. funding rate is a long-term rate. It 14 14 reflects that the assets are in riskier --The way it works? 15 15 Yes. Why don't you go ahead and you may be expecting to get higher interest 16 16 explain how the Segal blend method works to rates because a long-term rate, your assets 17 17 are held in investments that could be derive a withdrawal liability amount. 18 18 A withdrawing employer, in my view, riskier. 19 19 And, therefore, there's a risk is looked upon as at a point where he's 20 20 taken by the ongoing employers. The settling his pension obligation. And there 21 21 withdrawing employer is not taking that are a couple ways you can settle your 22 22 risk, so they shouldn't benefit from -- they pension obligation, one being paying lump 23 23 shouldn't benefit from a risk that they sums to the participants or purchasing 24 24 didn't take, that they are not taking. annuities for them. 25 25 So we don't use the funding And if you were to go out and Page 580 Page 581 ARBITRATION - VOLUME III 1 1 ARBITRATION - VOLUME III 2 2 assumption. We use the PBGC rates, but we liability pieces and asset pieces to come up 3 3 don't solely just use the PBGC rates because with the unfunded vested benefits for 4 4 withdrawal liability is not typically paid withdrawal liability purposes. 5 5 in a lump sum. It's paid over a period of Let me see if I can unpack that a O 6 6 time. little bit. 7 7 So what we do is we do a blend. We So am I correct that the Segal 8 8 do a blend of using the more current rate blend is a method in which the plan's 9 9 which is by proxy the PBGC, the more current liabilities are valued using different 10 10 rate for the liabilities up to the market discount rates, correct? 11 11 value of assets because in essence the Α Yes. 12 12 thought is that with the assets, you go out And a portion of the plan's 0 13 13 liabilities are valued using PBGC rates, and you purchase annuities. 14 14 For the liability above that, we correct? 15 say -- the thought is that a more long-term 15 A 16 16 expectation of what the annuity rates would And another, the remaining portion 17 17 be, we use a proxy of the funding assumption of the plan's liabilities are valued using 18 18 for that the plan's investment return assumption, 19 19 So we do a blend of the two to come correct? 20 20 up with the liabilities. A Well, that's used as a proxy, the 21 On the asset side, we use the 21 investment return assumption, a more 22 22 market value of assets because, again, it's long-term assumption. 23 23 on more of a termination basis. It's the In making the calculation, you are 24 24 employer settling their obligation. in fact using in part the plan's investment

return assumption, in this case 7.5 percent,

So that's how we come up with the

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	Page 582		Page 583
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	correct?	2	Q So they are in a sense a proxy for
3	A Yes.	3	commercial insurance annuity rates, correct?
4	Q And more particularly, you use the	4	A Yes.
5	PBGC rates to value the liabilities up to	5	Q And your view is that the
6	the market value of assets. And in	6	investment return assumption is a proxy for
7	connection with the liabilities in excess of	7	the long-term expected annuity rates?
8	the market value of assets, for those	8	A Yes.
9	liabilities, you switch and use the	9	Q In the 1980s, were PBGC rates
10	investment return assumption, correct?	10	higher or lower than the discount rates that
11	A The more long-term assumption, yes.	11	multiemployer plans were using at the time
12	Q Which is the investment return	12	to value liabilities for funding purposes?
13	assumption, correct?	13	A In the '80s? I think it was more
14	A Yes.	14	typically higher in most cases. I can't say
15	Q And in the case of The New York	15	for every situation.
16	Times' assessment, you use 7.5 percent,	16	Q And so for a pension fund at that
17	correct?	17	time in which the investment return
18	A Yes.	18	assumption and discount rate for funding
19	Q And did I hear you correctly that	19	purposes was lower than the PBGC rate, use
20	in your judgment, these PBGC rates are	20	of the Segal blend at that time would have
21	designed to approximate the rate for	21	resulted in a higher effective investment
22	purchase of annuities to settle pension	22	return assumption and discount rate for
23	obligations, correct?	23	withdrawal liability calculation purposes,
24	A Yes. They're used as a proxy for	24	right?
25	that, yes.	25	A Typically.
	Page 584		Page 585
1		1	-
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III Q And in using a higher effective		ARBITRATION - VOLUME III use to value liabilities for funding
2	ARBITRATION - VOLUME III Q And in using a higher effective discount rate, it would have resulted in a	2	ARBITRATION - VOLUME III use to value liabilities for funding purposes?
2	ARBITRATION - VOLUME III Q And in using a higher effective discount rate, it would have resulted in a lower present value of liabilities, correct?	2	ARBITRATION - VOLUME III use to value liabilities for funding purposes? A Typically lower.
2 3 4	ARBITRATION - VOLUME III Q And in using a higher effective discount rate, it would have resulted in a lower present value of liabilities, correct? A In most cases, yes.	2 3 4	ARBITRATION - VOLUME III use to value liabilities for funding purposes? A Typically lower. Q So then using the Segal blend in
2 3 4 5	ARBITRATION - VOLUME III Q And in using a higher effective discount rate, it would have resulted in a lower present value of liabilities, correct? A In most cases, yes. Q And thus a lower withdrawal	2 3 4 5	ARBITRATION - VOLUME III use to value liabilities for funding purposes? A Typically lower. Q So then using the Segal blend in today's interest rate environment will
2 3 4 5 6	ARBITRATION - VOLUME III Q And in using a higher effective discount rate, it would have resulted in a lower present value of liabilities, correct? A In most cases, yes. Q And thus a lower withdrawal liability, correct?	2 3 4 5 6	ARBITRATION - VOLUME III use to value liabilities for funding purposes? A Typically lower. Q So then using the Segal blend in today's interest rate environment will result in a lower discount rate and,
2 3 4 5 6 7	ARBITRATION - VOLUME III Q And in using a higher effective discount rate, it would have resulted in a lower present value of liabilities, correct? A In most cases, yes. Q And thus a lower withdrawal liability, correct? A In most cases, yes.	2 3 4 5 6 7	ARBITRATION - VOLUME III use to value liabilities for funding purposes? A Typically lower. Q So then using the Segal blend in today's interest rate environment will
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¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
withdrawal liability regardless of the	Do you remember that testimony?
particular pension plan's actual portfolio	3 A Yes.
of assets, correct?	Q In the event of a single-employer
5 A Yes.	5 plan, not a multi, but a single-employer
6 Q For funding purposes, not	6 plan, a standard termination, in that
withdrawal liability purposes, if there are	instance the pension plan in fact goes out
8 obligations over the next 20 years of that	8 and buys annuities to fund its benefit
fund, do you use PBGC rates as the discount	9 obligations, correct?
rate for funding purposes?	10 A I'm not I haven't done a
11 A Repeat the question again.	single-employer termination, so I don't know
12 Q Sure.	exact details of the calculation.
For funding purposes, if a pension	Q Do you have any reason to believe
plan has obligations over the next 20 years,	that in a standard single-employer
do you use the PBGC rates as the discount	that in a standard single-employer termination, the plan sponsor does not go
rate for funding purposes?	out and buy commercial annuities?
A For any client, you are saying?	A There might be details I don't
, , , , , , , , , , , , , , , , , , ,	know if they have enough money
Q For any of the funds to which you serve as the enrolled actuary.	19 Q In a standard termination.
	A Oh, a standard. I don't I'm not
3	familiar with the exact details of the
	22 calculations.
ago that one of the fationales for your	Q You just don't know one way or the
decision to use the Began blend is that you	24 other
view the withdrawing employer as settling its pension obligations.	25 A Right.
its pension obligations.	71 Right.
Page 588	Page 589
¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
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1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	moves out of the plan and either goes into	2	undertaken. Thus, the analogy that is at
3	another fund, another stands alone or is	3	the center of the Segal blend is not
4	picked up by the PBGC and the pieces are	4	reasonable.
5	separated.	5	ARBITRATOR IRVINGS: Go ahead.
6	Q Okay.	6	MR. MILLER: Please repeat the
7	In your experience as an enrolled	7	question.
8	actuary, did any of the funds to which you	8	(Requested portion of record read:
9	served as actuary partition a withdrawing	9	"Q. Okay.
10	employer's liabilities following a	10	In your experience as an enrolled
11	withdrawal and the assets allocated to them	11	actuary, did any of the funds to which
12	and had the withdrawal liability payments	12	you served as actuary partition a
13	made into the partitioned plan?	13	withdrawing employer's liabilities
14		14	following a withdrawal and the assets
15	MR. RICHMAN: Objection as to	15	allocated to them and had the withdrawal
16	relevance. Where are we going?	16	
17	ARBITRATOR IRVINGS: We need	17	liability payments made into the
18	some sense.	18	partitioned plan?")
19	MR. MILLER: Right.	19	(End of read-back.)
	Partitioning a plan is also a	_	A I don't have any plans that did
20	potential way of settling	20 21	that.
21	liabilities.		Q And I take it you're not aware of
22	And so what I'm getting at here is	22	whether the Pension Fund here has
23	that when an employer withdraws from an	23	partitioned The New York Times' liabilities
24	ongoing plan, the typical means of	24	and had its withdrawal liability payments
25	settling obligations are not in fact	25	made into a partitioned plan?
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1	-	1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III A I'm not aware.		ARBITRATION - VOLUME III contributions and assets and invested in
2	ARBITRATION - VOLUME III A I'm not aware. Q Generally speaking, withdrawal	2	ARBITRATION - VOLUME III contributions and assets and invested in the same manner?")
2 3 4	ARBITRATION - VOLUME III A I'm not aware. Q Generally speaking, withdrawal liability payments to a fund are pooled with	2	ARBITRATION - VOLUME III contributions and assets and invested in the same manner?") (End of read-back.)
2 3 4 5	ARBITRATION - VOLUME III A I'm not aware. Q Generally speaking, withdrawal liability payments to a fund are pooled with all other contributions and assets in that	2 3 4 5	ARBITRATION - VOLUME III contributions and assets and invested in the same manner?") (End of read-back.) A I don't know if it's all cases, but
2 3 4 5 6	ARBITRATION - VOLUME III A I'm not aware. Q Generally speaking, withdrawal liability payments to a fund are pooled with all other contributions and assets in that fund and invested in the same manner,	2 3 4 5 6	ARBITRATION - VOLUME III contributions and assets and invested in the same manner?") (End of read-back.) A I don't know if it's all cases, but typically they're together.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III A I'm not aware. Q Generally speaking, withdrawal liability payments to a fund are pooled with all other contributions and assets in that fund and invested in the same manner, correct? A I would assume so. Q Do you have any reason to believe that it would not be? A I'm not the investment manager, but I don't have any reason to believe. Q In your experience, has it ever been the case strike that. In your experience, isn't it true that in all cases withdrawal liability payments to the multiemployer fund are pooled with all other contributions and assets and invested in the same manner? A Can you repeat the beginning? (Requested portion of record read: "Q. In your experience, isn't it true that in all cases withdrawal	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III contributions and assets and invested in the same manner?") (End of read-back.) A I don't know if it's all cases, but typically they're together. Q They're pooled and invested together? A Typically. I don't know if it's in all cases. Q Are you aware of any case in which that was not done? A Off the top of my head, I can't think of one. Q And am I correct that the withdrawal liability payments, once pooled with all of the other assets, are invested for the long term? A If that's their investment policy. Q Are you aware of any multiemployer funds to which you are the actuary that does not invest for the long term? A Those that expect to be there for

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1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	investment strategy.	2	(End of read-back.)
3	Q So in the absence of an expected	3	A Yes.
4	insolvency, multiemployer plans invest for	4	Q So by charging the withdrawing
5	the long term, correct?	5	employer more in liability than would be
6	A Typically.	6	charged if the investment return assumption
7	Q Based on the rationale that you	7	best estimate were used, the Segal blend
8	gave for the Segal blend, do you believe	8	effectively provides a cushion in the event
9	that the Segal blend is justified on the	9	that the pension fund falls short of its
10	ground that if the plan's investments turn	10	best estimate investment return assumption,
11	out to generate returns below the best	11	correct?
12	estimate investment return assumption, the	12	A That doesn't always happen.
13	withdrawing employer cannot be assessed any	13	Sometimes it's the reverse. So it's not
14	additional liability?	14	necessarily
15	A Say that again.	15	Q In the current interest rate
16	(Requested portion of record read:	16	environment, however, by charging the
17	"Q. Based on the rationale that	17	withdrawing employer more in liability than
18		18	would be charged if the best estimate
19	you gave for the Segal blend, do you	19	investment return assumption is used, the
20	believe that the Segal blend is justified	20	Segal blend provides a cushion in the event
21	on the ground that if the plan's	21	the plan falls short of its best estimate
22	investments turn out to generate returns below the best estimate investment return	22	investment return assumption, correct?
23		23	A Can you repeat it again.
24	assumption, the withdrawing employer	24	
25	cannot be assessed any additional	25	(Requested portion of record read:
23	liability?")	23	"Q. In the current interest rate
	Page 596		Page 597
1		1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III environment, however, by charging the		ARBITRATION - VOLUME III of its best estimate?
2	ARBITRATION - VOLUME III environment, however, by charging the withdrawing employer more in liability	2	ARBITRATION - VOLUME III of its best estimate? A Because the way the mechanics work
2	ARBITRATION - VOLUME III environment, however, by charging the withdrawing employer more in liability than would be charged if the best	2	ARBITRATION - VOLUME III of its best estimate? A Because the way the mechanics work and there is a higher number, there is more
2 3 4	ARBITRATION - VOLUME III environment, however, by charging the withdrawing employer more in liability than would be charged if the best estimate investment return assumption is	2 3 4	ARBITRATION - VOLUME III of its best estimate? A Because the way the mechanics work and there is a higher number, there is more being charged.
2 3 4 5	ARBITRATION - VOLUME III environment, however, by charging the withdrawing employer more in liability than would be charged if the best estimate investment return assumption is used, the Segal blend provides a cushion	2 3 4 5	ARBITRATION - VOLUME III of its best estimate? A Because the way the mechanics work and there is a higher number, there is more being charged. Q Let me ask you this question:
2 3 4 5	ARBITRATION - VOLUME III environment, however, by charging the withdrawing employer more in liability than would be charged if the best estimate investment return assumption is used, the Segal blend provides a cushion in the event the plan falls short of its	2 3 4 5 6	ARBITRATION - VOLUME III of its best estimate? A Because the way the mechanics work and there is a higher number, there is more being charged. Q Let me ask you this question: Isn't it true that the fund's a fund's
2 3 4 5 6 7	ARBITRATION - VOLUME III environment, however, by charging the withdrawing employer more in liability than would be charged if the best estimate investment return assumption is used, the Segal blend provides a cushion in the event the plan falls short of its best estimate investment return	2 3 4 5 6 7	ARBITRATION - VOLUME III of its best estimate? A Because the way the mechanics work and there is a higher number, there is more being charged. Q Let me ask you this question: Isn't it true that the fund's a fund's assets could turn out to generate higher
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	Page 598	Page 599
1	ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III
2		2 A Yes.
3	liability payments, correct? A Right.	Q And can you briefly summarize what
4	Q When you certify that your best	4 those interest rates were that you blended
5	estimate investment return assumption is	5 together?
6	7.5 percent, that means the returns might be	6 A For the valuation as of May 31,
7	higher or might be lower but on average over	7 2009 of the unfunded vested benefits, we
8	the long term are expected to return	8 used for the PBGC rates 5.5 percent for the
9	7.5 percent annually; isn't that correct?	9 first 20 years and 5.02 percent thereafter.
10	A Yes.	And for the long-term rate, we used
11	Q Let's turn back to Exhibit 1 which	¹¹ 7 and a half percent.
12	is the actual withdrawal liability	Q And by "long-term rate," you mean
13	calculation in this case.	for the portion for the long-term rate,
14	And why don't you draw your	you mean the portion for the vested benefits
15	attention to FUND-000730.	that were not matched by the market value of
16	Are you there?	plan assets using the PBGC rates, correct?
17	A Yes.	A Yes.
18	Q So you indeed in this case utilized	18 Q And for those you used the
19	the Segal blend in calculating The Times'	investment return assumption of 7.5 percent,
20	partial withdrawal liability, correct?	20 correct?
21	A Yes.	21 A Yes.
22	Q And this page, 0000730, sets forth	Q And the result of using those
23	the particular interest rates that you in	blending rates was an effective investment
24	fact blended in applying the Segal blend,	return assumption that was less than
25	correct?	7.5 percent, correct?
	Page 600	Page 601
1	Page 600 ARBITRATION - VOLUME III	Page 601 ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III A Yes.	1 ARBITRATION - VOLUME III 2 A Yes.
2	ARBITRATION - VOLUME III A Yes. Q And that effective investment	1 ARBITRATION - VOLUME III 2 A Yes. 3 Q And is it fair to say that
2 3 4	ARBITRATION - VOLUME III A Yes. Q And that effective investment return assumption was below your best	1 ARBITRATION - VOLUME III 2 A Yes. 3 Q And is it fair to say that 4 commercial insurance companies when they
2 3 4 5	ARBITRATION - VOLUME III A Yes. Q And that effective investment return assumption was below your best estimate of the future returns that the NMDU	ARBITRATION - VOLUME III A Yes. Q And is it fair to say that commercial insurance companies when they issue annuities, they tend to support those
2 3 4 5 6	ARBITRATION - VOLUME III A Yes. Q And that effective investment return assumption was below your best estimate of the future returns that the NMDU Fund's assets are expected to generate over	ARBITRATION - VOLUME III A Yes. Q And is it fair to say that commercial insurance companies when they issue annuities, they tend to support those annuities largely or principally through
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III A Yes. Q And that effective investment return assumption was below your best estimate of the future returns that the NMDU Fund's assets are expected to generate over the long term, correct? A Yes. Q And that effective investment return assumption was also below your best estimate of the future anticipated experience of this Pension Fund, correct? A Expected for the long term? Q Yes. A Yes. Q Yes. So just to confirm: The resulting effective investment return assumption by applying the Segal blend was lower than your best estimate of the future anticipated experience of this plan over the long term? A Yes. Q Now, you previously testified that	ARBITRATION - VOLUME III A Yes. Q And is it fair to say that commercial insurance companies when they issue annuities, they tend to support those annuities largely or principally through ownership of high grade corporate bonds, correct? A I'm not sure of the details. Q Let me ask you this question: Do you have any reason to believe that the NMDU Fund here is planning to change its investment mix in the near future? A I have no idea what they're planning to do. Q And in connection with the withdrawal liability payments that are being made by The New York Times in connection with this assessment, they are in fact going into the same pool of assets that the other contributing employers' contributions are going into, correct? A It's my understanding.

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	Page 602		Page 603
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	are in fact invested like all the other	2	can do so in a more articulate way.
3	assets over the long term, correct?	3	BY MR. MILLER:
4	A I would think so.	4	Q In your opinion, would it be
5	Q And the Pension Fund is not using	5	appropriate for an actuary in valuing
6	The Times' payments to purchase annuities,	6	liabilities for withdrawal calculation
7	correct?	7	purposes to use purely a commercial annuity
8	A Not that I know of. I'm not aware.	8	rate as opposed to a blend?
9	Q You've been employed at Segal	9	MR. RICHMAN: Objection. He's
10	since strike that.	10	asking for an opinion.
11 12	Let me ask you this question: Do	11 12	Rephrase the question and ask what
13	you believe that it is appropriate to use	13	she does.
14	current market rates to value all of the	14	He is asking for an opinion. She
15	liabilities of a Pension Fund in calculating	15	is not here as an expert witness.
16	withdrawal liability?	16	ARBITRATOR IRVINGS: You can
17	A Repeat the question again.	17	respond.
18	(Requested portion of record read:	18	MR. MILLER: Yes. But I'm
19	"Q. Do you believe that it is	19	allowed to ask her for her
20	appropriate to use current market rates	20	justification of use of the Segal
21	to value all of the liabilities of a	21	blend as compared to other
22	Pension Fund in calculating withdrawal	22	approaches.
23	liability?") (End of road book)	23	And I'd like to ask her whether she
24	(End of read-back.) MR. MILLER: Strike that. Let	24	would embrace a different approach and,
25	me rephrase the question. I think I	25	if she wouldn't, why not. ARBITRATOR IRVINGS: You can
20	me repinase the question. I think i	23	ARBITRATOR IRVINGS: You can
	Page 604		Page 605
1	ARBITRATION - VOLUME III	1	
			ARBITRATION - VOLUME III
2	have it. Go ahead.	2	ARBITRATION - VOLUME III appropriate?
2	have it. Go ahead.		appropriate?
	have it. Go ahead. (Requested portion of record read:	2	appropriate?
3	have it. Go ahead. (Requested portion of record read: "Q. In your opinion, would it be	2	appropriate? A I would use the Segal blend and
3 4	have it. Go ahead. (Requested portion of record read:	2 3 4	appropriate? A I would use the Segal blend and that's my best estimate. Q That's not the question I asked.
3 4 5	have it. Go ahead. (Requested portion of record read: "Q. In your opinion, would it be appropriate for an actuary in valuing	2 3 4 5	appropriate? A I would use the Segal blend and that's my best estimate.
3 4 5 6	have it. Go ahead. (Requested portion of record read: "Q. In your opinion, would it be appropriate for an actuary in valuing liabilities for withdrawal calculation	2 3 4 5 6	appropriate? A I would use the Segal blend and that's my best estimate. Q That's not the question I asked. The question I asked is: You,
3 4 5 6 7 8 9	have it. Go ahead. (Requested portion of record read: "Q. In your opinion, would it be appropriate for an actuary in valuing liabilities for withdrawal calculation purposes to use purely a commercial annuity rate as opposed to a blend?") (End of read-back.)	2 3 4 5 6 7 8	appropriate? A I would use the Segal blend and that's my best estimate. Q That's not the question I asked. The question I asked is: You, personally, as the actuary for this Fund do not think it is appropriate to use purely a commercial market annuity rate to calculate
3 4 5 6 7 8 9	have it. Go ahead. (Requested portion of record read: "Q. In your opinion, would it be appropriate for an actuary in valuing liabilities for withdrawal calculation purposes to use purely a commercial annuity rate as opposed to a blend?") (End of read-back.) A I would not use a pure annuity rate	2 3 4 5 6 7 8 9	appropriate? A I would use the Segal blend and that's my best estimate. Q That's not the question I asked. The question I asked is: You, personally, as the actuary for this Fund do not think it is appropriate to use purely a commercial market annuity rate to calculate withdrawal liability?
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	have it. Go ahead. (Requested portion of record read: "Q. In your opinion, would it be appropriate for an actuary in valuing liabilities for withdrawal calculation purposes to use purely a commercial annuity rate as opposed to a blend?") (End of read-back.) A I would not use a pure annuity rate for the reasons I explained about the Segal blend. Whether another actuary believes that that is their best estimate, that's their belief. Q And in connection with the Pension Fund here and the calculation of The New York Times' partial withdrawal liability, in your judgment, it would not be appropriate to use exclusively or purely a commercial annuity rate, correct? A I would not use it.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	appropriate? A I would use the Segal blend and that's my best estimate. Q That's not the question I asked. The question I asked is: You, personally, as the actuary for this Fund do not think it is appropriate to use purely a commercial market annuity rate to calculate withdrawal liability? A I, personally, would not use it. Q And in your judgment it's not appropriate, correct? Yes or no? A Whether another actuary finds it reasonable ARBITRATOR IRVINGS: The question is what do you find it? A There are many ways that it could be done. I don't think it's unreasonable to use funding. I don't think it's unreasonable to use one rate, but I wouldn't do it. I would do it the way I do it which

	Page 606		Page 607
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2 A	1982.	2	Q Do you know who Thomas Levy is?
3 Q	Since?	3	A He is the chief actuary for the
4 Å	1982.	4	Segal blend.
5 Q	And in your role as enrolled	5	Q Do you know who Judith Mazo is?
,	ary for multiemployer plans, you've	6	A She was a legal counsel for the
	ays used the Segal blend method, correct?	7	Segal Company.
8 A	Yes.	8	Q She's retired now, right?
9 Q	And I think as we discussed	9	A Yes.
_	er, I think your testimony was that	10	Q She was long-time legal counsel to
	e was a period of time in the 1980s in	11	the Segal Company?
	ch the Segal blend would cause withdrawal	12	A Yes. I don't know how long. "Long
	lity to be lower than it would be had	13	time," I don't know what that means.
	investment return assumptions be used.	14	Q Do you know if they ever provided
15	Do you remember that testimony?	15	any guidance about the use of the Segal
16 A		16	blend to the consulting actuary staff?
17 Q	And but I take it there came a time	17	A I'm sure they would send out any
_	n interest rates associated with	18	I'm sure they sent out guidance throughout
	mercial annuities fell below investment	19	the years.
	rn assumptions such that, as is	20	Q Have you ever heard of a Supreme
	ently the case, use of the Segal blend	21	Court case called Concrete Pipe?
	in to cause increases in withdrawal	22	A Yes.
	lity relative to application of	23	Q Ms. Egan, I would like to draw your
	stment return assumptions, correct?	24	attention to the green binder, which is the
25 A	Yes.	25	Objected Exhibits binder.
	1 65.		
	Page 608		Page 609
1	ARBITRATION - VOLUME III	1	Page 609 ARBITRATION - VOLUME III
1 2	_	2	
	ARBITRATION - VOLUME III		ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III And to Objected Exhibit 5. A Which one? Q Five.	2	ARBITRATION - VOLUME III practice?
2 3	ARBITRATION - VOLUME III And to Objected Exhibit 5. A Which one? Q Five. MR. RICHMAN: Let's have the	2 3 4 5	ARBITRATION - VOLUME III practice? A Yes. Q And this document appears to be a memo from Mr. Levy and Ms. Mazo dated
2 3 4 5	ARBITRATION - VOLUME III And to Objected Exhibit 5. A Which one? Q Five. MR. RICHMAN: Let's have the Objected Exhibit 5 objected to.	2 3 4 5 6	ARBITRATION - VOLUME III practice? A Yes. Q And this document appears to be a memo from Mr. Levy and Ms. Mazo dated March 29, 1994 relating to use of the Segal
2 3 4 5 6 7	ARBITRATION - VOLUME III And to Objected Exhibit 5. A Which one? Q Five. MR. RICHMAN: Let's have the Objected Exhibit 5 objected to. We object to this with respect to	2 3 4 5 6 7	ARBITRATION - VOLUME III practice? A Yes. Q And this document appears to be a memo from Mr. Levy and Ms. Mazo dated March 29, 1994 relating to use of the Segal blend following the Supreme Court's decision
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ARBITRATION - VOLUME III requirements on actuaries in calculating withdrawal liability, which statutory requirements says that the actuary has to use assumptions that in the aggregate are reasonable and the best estimate of anticipated experience requires that the investment return assumption for funding purposes be used in calculating liabilities for withdrawal liability purposes.

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This memo is a memo from senior people at the Segal Company in which the Segal Company recognizes, having developed the so-called Segal blend, that the Supreme Court decision in Concrete Pipe, as they concede, raises a serious question whether continued use of the Segal blend is permissible.

That's what they say in the very first paragraph.

In the second paragraph and throughout the remainder of the memo, they state these issues about continued use of the Segal blend must be brought to Page 611

ARBITRATION - VOLUME III the attention of clients who might be affected.

And the clear implication of the memo and its attachments is that the very actuarial consulting firm that developed this approach recognized that the Supreme Court decision could -- and we submit does -- render that approach illegal. And they wanted to take steps, as set forth in the memo when you read it in its entirety, to protect themselves from potential professional liability in the event it continued to be used and was eventually found to be illegal.

So the fact that the very consulting firm that developed this approach found the Supreme Court decision, which we're relying upon, as raising a serious issue of the continued legal permissibility is, I would submit, not merely relevant but highly relevant and should be given appropriate weight by you in your decision here.

MR. RICHMAN: Okay. Whether

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ARBITRATION - VOLUME III the Segal method is illegal under Concrete Pipe is a legal question.

The fact that the Segal Company issued a memo saying it raised -- and it actually says, "The US Supreme Court decision raises the question whether that is permissible" -- is -- has no weight whatsoever in anyone, whether it's yourself or a court, deciding whether Concrete Pipe determined that the Segal blend is impermissible."

This is a legal question.

ARBITRATOR IRVINGS: I'll get to you, too. Don't worry.

(Laughter.)

MR. RICHMAN: I could see him out of my left eye. I didn't know if he was going to jump on the table.

And are we seriously going forward with the argument here that because the Segal Company raised the issue and asked its actuaries to do certain things with respect to their clients, that somehow that lends a support for a legal

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ARBITRATION - VOLUME III determination as to whether what Concrete Pipe decided?

The fact of the matter is, as we know, Courts subsequent to Concrete Pipe don't interpret Concrete Pipe the way that The Times interprets it. In fact, the Seventh Circuit, Judge Posner, specifically endorses the use of the Segal method.

The other thing is that we're now going to go down the road and the reality is the Segal method (sic.) hasn't retreated from the use of the Segal method.

And we already had testimony from this witness about how she uses it for all of her plans from beginning to end.

And so I really don't understand why we're going to go on this detour. It has no relevance.

MR. MILLER: Mr. Richman suggested that there was no link between this memo and the factual record.

	Page 614		Page 615
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	And, indeed, what I would like to	2	Levy and Judith Mazo, M-A-Z-O, to
3	know by further questioning of Ms. Egan	3	consulting staff and others.
4	is did she indeed discuss this memo with	4	BY MR. MILLER:
5	her clients? Did she discuss it with the	5	Q So, Ms. Egan, I think you testified
6	NMDU Fund per the memo's guidance? And	6	that you had seen this document before.
7	to the extent she did not, why not? And	7	Did you ever discuss the issue of
8	what her judgment was, her factual	8	whether the Concrete Pipe decision
9	judgment was in connection with	9	foreclosed application for the Segal blend
10	understanding and applying the guidance	10	with the NMDU Fund?
11	provided by this memo.	11	A This is 20 years ago. I don't
12	Those are factual links and credits	12	recall the details.
13	(phonetic).	13	Q Do you not recall the details of
14	ARBITRATOR IRVINGS: I think	14	the memo, or do you not recall the details
15	that on the issue of binding legal	15	of raising the issue of the implications of
16	determination, I think you're	16	the Concrete Pipe decision with your client
17	correct. As the basis for factual	17	NMDU Fund?
18	inquiry, it's a relevant document.	18	A I don't recall whether it was
19	So you can have the document.	19	raised or not. It was 20 years ago. I have
20	We'll mark it as 118.	20	numerous clients
21	(Arbitration Exhibit 118,	21	MR. RICHMAN: Just answer the
22	Memorandum dated March 29, 1994,	22	question.
23	was marked in Evidence.)	23	A Okay. I don't recall.
24	ARBITRATOR IRVINGS: 118 is a	24	Q Do you recall discussing the
25	memo dated March 29, 1994 from Thomas	25	guidance in this memo with any of the
	Page 616		Page 617
1	Page 616 ARBITRATION - VOLUME III	1	Page 617 ARBITRATION - VOLUME III
1 2	ARBITRATION - VOLUME III	1 2	
			ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III multiemployer plans to which you served as	2	ARBITRATION - VOLUME III Fund, correct?
2	ARBITRATION - VOLUME III multiemployer plans to which you served as enrolled actuary?	2	ARBITRATION - VOLUME III Fund, correct? A Yes.
2 3 4	ARBITRATION - VOLUME III multiemployer plans to which you served as enrolled actuary? A I don't recall specifically a	2 3 4	ARBITRATION - VOLUME III Fund, correct? A Yes. Q But for withdrawal liability
2 3 4 5	ARBITRATION - VOLUME III multiemployer plans to which you served as enrolled actuary? A I don't recall specifically a client. Q After receiving and reviewing this memo, did you have any conversations with	2 3 4 5	ARBITRATION - VOLUME III Fund, correct? A Yes. Q But for withdrawal liability purposes, you apply a different best
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2 3 4 5 6 7	ARBITRATION - VOLUME III multiemployer plans to which you served as enrolled actuary? A I don't recall specifically a client. Q After receiving and reviewing this memo, did you have any conversations with any of your fellow actuaries at the Segal Company about the memo and its implications	2 3 4 5 6 7 8	ARBITRATION - VOLUME III Fund, correct? A Yes. Q But for withdrawal liability purposes, you apply a different best estimate of liabilities, correct? A Yes. Q Is that withdrawal liability best estimate based on your assessment of the
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1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	Q Let me see if I can ask the	2	BY MR. MILLER:
3	question a little differently for you.	3	Q In determining the withdrawal
4	A I'm not sure where you are going.	4	liability best estimate, you said that you
5	Q Is your withdrawal liability best	5	do so based on current market rates,
6	estimate based on an assessment or an	6	correct?
7	assumption respecting a hypothetical pool of	7	A Yes. To discount the liabilities.
8	assets that are not currently in this	8	Q To discount the liabilities,
9	Pension Fund?	9	exactly.
10	A I'm not sure how to answer that	10	So the discount rate that you use
11	question.	11	in your withdrawal liability best estimate
12	We use the market value of assets,	12	is a discount rate that is tied to current
13	the current value of assets, and we discount	13	market rates, correct?
14 15	the liabilities using the blend to come up	14 15	A Yes. It's actually the blend, the
16	with their unfunded vested benefits.		blend of the two.
17	Q And am I correct that the rate for	16 17	Q The blend of the two.
18	the current value of assets is a rate that	18	A Right.
19	is tied to investment strike that is	19	Q And one part of the blend is
20	tied to interest rates on high quality	20	current market rates, correct?
21	corporate bonds?	21	A Yes.
22	A It's a snapshot of the value of the assets at that point in time. The assets	22	Q And by "current market rates," you mean rates on commercial annuity products or
23	are a snapshot at that point in time.	23	J 1
24	MR. MILLER: Strike that. Let	24	a proxy thereof like the PBGC rates? A Yes.
25	me start again.	25	Q And commercial annuity rates are
	me start again.		Q And commercial amounty rates are
	Page 620		Page 621
1	_	1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
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	Page 622		Page 623
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	A The vested monthly benefit is the	2	liability.
3	amount of money that the participant will	3	And I have to take back what I
4	receive.	4	said. It is part of the liabilities but not
5	Q In a pension, correct? As opposed	5	the present value of vested benefits. It's
6	to an expense of the plan.	6	part of the normal cost liability.
7	A Oh, oh, okay.	7	Q Just to clarify the record, but not
8	Q Here's where I'm getting, the term	8	part of the present value of vested
9	"vested benefits" does not include pension	9	benefits, correct?
10	plan expenses, correct?	10	A Calculation, yes. Present value of
11	A Correct.	11 12	vested benefits calculation.
12 13	Q So in connection with the NMDU	13	Q Correct?
14	Fund, for funding purposes, you do not	14	A Yes.
15	include administrative expenses in valuing	15	MR. MILLER: Mr. Arbitrator, at
16	the Pension Fund's pension liabilities,	16	this point, I am done.
17	correct?	17	Let me ask you this: In connection
18	A We include it with the normal costs	18	with the third issue in this arbitration,
19	of the plan, which is a liability.	19	the so-called ordering of the calculation of the revised assessment, it's The New
20	Q But you don't include it in	20	York Times' view that the documents make
21	calculating the present value of the Fund's liabilities, correct?	21	
22		22	clear that the ordering of that
23	A Correct. Q And why is that?	23	calculation was changed. Because of that, unless,
24	And why is that? A Because it's included as a term	24	Mr. Arbitrator, you would like me to ask
25	cost with the normal cost which is a	25	some questions to confirm for the factual
	cost with the hormal cost which is a		some questions to commin for the factuar
	Page 624		Page 625
1	_	1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III record that when Ms. Egan calculated the		ARBITRATION - VOLUME III ARBITRATOR IRVINGS: Off the
2	ARBITRATION - VOLUME III record that when Ms. Egan calculated the revised assessment, she changed the order	2	ARBITRATION - VOLUME III ARBITRATOR IRVINGS: Off the record.
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2 3 4	ARBITRATION - VOLUME III record that when Ms. Egan calculated the revised assessment, she changed the order of calculations. In the absence of your thinking that's necessary, at this	2 3 4	ARBITRATION - VOLUME III ARBITRATOR IRVINGS: Off the record. (A brief recess was taken.) CROSS EXAMINATION BY MR. RICHMAN:
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Page 626 ARBITRATION - VOLUME III spurts, so depending on what we were working on. Sometimes he called me, I didn't call him. Q When he would call you, what would he call you about? ARBITRATION - VOLUME III Q And so you attend trustee meeting A Yes. Q And do you attend all the trustee meetings? A No, not all of them.	627
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⁵ Q When he would call you, what would ⁵ meetings?	
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6 he call you about? 6 A No not all of them	
⁷ A Maybe he didn't understand a number ⁷ Q And how often do you attend tru	stee
8 in a report or 8 meetings?	
⁹ Q Would he call you to ask you to do ⁹ A Approximately once a year, twic	e a
things? 10 year. Depends on how often they are in	a
A Typically, it would be through 11 given year because they are not it's	
John, typically, if he asked. 12 not what's the word I want? it varies	S
Q And let's just for the record so 13 by year.	
the record is clear, "John" is John Urbank? 14 Q Does Segal have a point person v	
¹⁵ A John Urbank. ¹⁵ is charged with communicating with the	;
Q Who is one of your colleagues at Pension Fund?	
17 Segal? 17 A Yes.	
A One of my colleagues at Segal. 18 Q And who is that?	
Q Do you communicate directly with 19 A That's John Urbank.	
the trustees of the Pension Fund? 20 Q During the withdraw that.	
A No. Other than at meetings, a 21 When you became an enrolled act	
trustee meeting, no, no. 22 at Segal and were providing and serv	
Q But you do communicate with him at as an enrolled actuary for clients, did you	u
trustee meetings? 24 initially use the Segal method for	
25 A Yes. 25 calculating withdrawal liability?	
Page 628 Page	629
¹ ARBITRATION - VOLUME III ¹ ARBITRATION - VOLUME III	
² A I always used the Segal method. ² contribution base units for the pension	
3 Q Always? 4 A Yes. 3 funds was shifts. 4 A Yes.	
3 Q Always? 4 A Yes. 3 funds was shifts. 4 A Yes.	[
3 Q Always? 4 A Yes. 5 Q So there's not a single instance in 6 which you haven't used the Segal method? 3 funds was shifts. 4 A Yes. 5 Q How did you know that? 6 A Any correspondence that I had as	
3 Q Always? 4 A Yes. 5 Q So there's not a single instance in 6 which you haven't used the Segal method? 7 A Not as my best estimate, correct. 8 Q When you became the enrolled 9 G Inds was shifts. 4 A Yes. 5 Q How did you know that? 6 A Any correspondence that I had as took over the case, any correspondence I referred to shifts. Any conversation at an overlap of the case, and the	saw ny
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Page 630	Page 631
¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
² A No.	A There was no need for me to see the
Q Did you ever review The New York	³ remittance reports.
Times Collective Bargaining Agreement with	Q Now, we discussed in response to
5 the Union?	5 Mr. Miller's questions CBUs or contribution
6 A No.	base units.
⁷ Q Why not?	⁷ Can you tell us what a contribution
8 A There was no need to for my	8 base unit is and what your understanding is?
⁹ purposes.	⁹ A My understanding of contribution
Q And why was there no need to do so?	base unit is the basis for how you make
A Because I didn't need it in any of	contributions, whether it be you provide
the calculations. I didn't need to look at	a dollar amount per an hour, a day, a
the Collective Bargaining Agreement for any	specified unit of measurement for how to
reason.	for how much contributions are put into the
Q Did you ever review the C & S	rana.
Collective Bargaining Agreement with the	Q Okay. And what is a contribution
17 Union? 18 A C & S?	rate? A It's the amount of the the
71 C & 5:	A it's the amount of the the
$Q \subset \mathbf{a}$ b.	dollar amount that is being put into the fund by this unit.
11 110.	21 Q Okay. So is the contribution rate
Q Okay.	the same as the contribution base unit?
Did you ever review The Times' remittance reports to the Pension Fund?	23 A No.
A Remittance reports, no.	Q If you would turn to Exhibit 42.
25 Q Why not?	25 A What color?
Q why not:	11 What color:
Page 632	Page 633
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1 ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
1 ARBITRATION - VOLUME III 2 Q White.	ARBITRATION - VOLUME III it says "day rate, short night, long night,
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ARBITRATION - VOLUME III Q Contributing employer; yes. Q You see it says in the "from" line, it has your name and Mr. Urbank's name. Do you see that? A Yes. Q Did you prepare this with Mr. Urbank? A Yes. Q And the first line says, "As requested, we have estimated the potential withdrawal lability for El Diario estimate," Do you know who made that request? A Most probably Murray Schwartz. Do you know who made that request? A Most probably Murray Schwartz. Q And why do you answer, "Most probably Murray Schwartz. Q And when you say "to us," is it to you, to Mr. Urbank, to both of you? A It could be any combination ARBITRATION - VOLUME III that with respect to the Pension Fund? A That would most probably be Murray Schwartz. Q Now, was the El Diario estimate ever discussed at a Pension Fund meeting. Q O Do you know whet he nature of the discussion was? A We reported that the calculation was done. Q O And what was there any discussion of the meeting other than your report? A My recollection is that after our report, there was further discussion of the meeting other than your report? In A My recollection is that after our report, there was further discussion of the meeting other than your report? In A My recollection is that after our report, there was further discussion of the meeting other than your report? In A My recollection is that after our report, there was further discussion of the possibility of El Diario incurring a partial withdrawal, possibility of it. Q And who would have that information? A The Fund office would have that	ARBITRATION - VOLUME III Q Contributing employer? A A contributing employer, yes. Q You see it says in the "from" line, it has your name and Mr. Urbank's name. Do you see that? A Yes. Q Did you prepare this with Mr. Urbank? Q And the first line says, "As requested, we have estimated the potential withdrawal liability for EI Diario, an employer of the above fund, assuming withdrawal lability for EI Diario, an employer of the above fund, assuming withdrawal during the year ended May 31, 2011. Do you know who made that request? A Most probably Murray Schwartz. Q And why do you answer, "Most probably Murray Schwartz": A Because usually he made the requests to us. C Q And when you say "to us," is it to you, to Mr. Urbank, to both of you? A It could be any combination Page 636 ARBITRATION - VOLUME III that with respect to the Pension Fund? A That would most probably be Murray Schwartz. Q Now, was the EI Diario estimate ever discussed at a Pension Fund meeting? A I believe this one was discussed at a Pension Fund meeting? A I believe this one was discussed at a Pension Fund meeting? A D Oby ou know what the nature of the discussion was? A We reported that the calculation was done. And was there any discussion at the meeting other than your report? A And was there any discussion at the meeting other than your report? A And was there any discussion at the meeting other than your report?		
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ARBITRATION - VOLUME III that with respect to the Pension Fund? A That would most probably be Murray Schwartz. Q Now, was the El Diario estimate ever discussed at a Pension Fund meeting? A I believe this one was discussed at a Pension Fund meeting. Q Do you know what the nature of the discussion was? A We reported that the calculation was done. Q Okay. A My recollection is that after our report, there was further discussion of the possibility of El Diario incurring a partial withdrawal, possibility of it. Q And what was the nature of that discussion? A RBITRATION - VOLUME III shifts to see if there is a 70 percent decline in the base units to see if a partial possibly occurred. Q Were you given the assignment to track to determine whether partial withdrawal occurred? A No. Q Who was given that assignment? A I don't know if anyone was given the assignment to determine whether it occurred. I think it was just noted that the shifts need to be kept track of to see if there is a possibility. Q Okay. And did the Segal Company track shifts? A No. We don't have that information. Q And who would have that information? A The Fund office would have that	ARBITRATION - VOLUME III that with respect to the Pension Fund? A That would most probably be Murray Schwartz. Q Now, was the El Diario estimate ever discussed at a Pension Fund meeting? A I believe this one was discussed at a Pension Fund meeting. Q Do you know what the nature of the discussion was? A We reported that the calculation was done. Q Okay. And was there any discussion at the meeting other than your report? A RBITRATION - VOL Shifts to see if there is a 70 propertion and decline in the base units to see if there is a 70 propertion and decline in the base units to see if there is a 70 propertion at 7 partial possibly occurred. Q Were you given the a track to determine withdrawal occurred? A No. Q Who was given that a A No. A I don't know if anyon the assignment to determine occurred. I think it was just the shifts need to be kept track. And was there any discussion at the meeting other than your report? A RBITRATION - VOL ARBITRATION	Q And when you say "to us," is it you, to Mr. Urbank, to both of you?	payment schedule for an estimate unless we're requested to.
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Page 638	Page 639
¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
² Q And you see that well, why don't	² A This Fund has had so many changes
you tell us what that is.	in co-counsel over the years, I'm not even
⁴ A An estimate for withdrawal	sure who co-counsel was in '96.
⁵ liability for Raritan Periodical Sales.	Did either of the co-counsel of the
6 Q And did you participate in doing	Fund raise a question to you about why you
⁷ this estimate?	y use shifts to do the schedule?
8 A Yes.	8 A No.
9 Q And if you see in the second	9 Q Did Mr. Schwartz raise a question
paragraph, it says, "The payment schedule	to you as to why you use shifts to do the
reflects the average annual shifts of 39,022	schedule?
in the highest rate consecutive years."	12 A No.
Do you see that sentence?	Q Let's go to Exhibit 100.
14 A Yes.	And can you tell me what this is?
Q Why did you include that sentence	15 A A calculation for the actual
in the memo:	withdrawar for the Dany Racing Form.
11 Beedase a payment senedate was	And who was or is the Dany
done, and we were just showing how it was done.	Racing Form:
done.	They were a contributing employer.
Q Okay.	Q You see in the second paragraph there is a discussion about payment schedule
Now, on the second page, do you see that it says "cc co-counsel"?	of average annual shifts?
23 A Uh-huh.	23 A Yes.
Q Who was co-counsel at the time of	Q Why did you do a payment schedule
this was prepared?	for this calculation?
tills was propared.	101 1110 1110 1110
Page 640	Page 641
¹ ARBITRATION - VOLUME III	
1 ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III 2 A Yes.
1 ARBITRATION - VOLUME III 2 A Because this was an actual	1 ARBITRATION - VOLUME III 2 A Yes.
ARBITRATION - VOLUME III A Because this was an actual withdrawal.	1 ARBITRATION - VOLUME III 2 A Yes. 3 Q And why did you do a payment
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	Page 642		Page 643
1 ARBITR	ATION - VOLUME III	1	ARBITRATION - VOLUME III
	happens to be the last page.	2	from the plan?
	it says at the top, Roman	3	A I don't think so.
	Payment Schedule.	4	Q How do you know that?
5 A Uh-huh		5	A Because I think they're still a
	d you do that calculation?	6	contributing employer, if I remember
7 A Yes.	d you do that calculation:	7	correctly.
	hy did you use shifts to do	8	Q Now take a look at Page 11.
9 that calculatio		9	And you see Roman Numeral V is
that carculatio	the those are the base units.	10	the
A Decaus	yone associated with the	11	MR. RICHMAN: The witness can't
Q Did any	raise a question to you as to	12	help the Arbitrator.
i chistori i unu	shifts for contribution base	13	ARBITRATOR IRVINGS: No, it's
wify you used	ating this payment schedule	14	okay. Page 11.
for Jalt?	ating this payment schedule	15	MR. RICHMAN: You have more
16 A No.		16	than one Page 11?
$\frac{17}{17}$ Q Turn to	. 102	17	Actually, we do. That's pretty
_		18	
what this is?	ook at 103, can you tell me	19	interesting. Well, what I'm focused on is 1298. FUND-1298.
	a with drawal liability	20	
	a withdrawal liability	21	So it goes 10, 11, 12, 13, 11.
report for Dov		22	Just to keep everybody on their toes. BY MR. RICHMAN:
Q Allu WI	hat was Dow Jones or is?	23	
23 A A contr	ributing employer of the	24	Q So did you calculate this payment period?
i uiid.	be Jones actually withdraw	25	A Yes.
Q Dia Do	be somes actuarry withdraw		A 103.
	Page 644		Page 645
1 ARBITR	-	1	Page 645 ARBITRATION - VOLUME III
	RATION - VOLUME III	1 2	-
² Q And w	RATION - VOLUME III Why did you use shifts to		ARBITRATION - VOLUME III
 Q And w calculate the 	RATION - VOLUME III why did you use shifts to payment period?	2	ARBITRATION - VOLUME III Q All right. So we are now to
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Q And w calculate the A Why? Q Yes. A Becau ARBIT	RATION - VOLUME III why did you use shifts to payment period? use it's the base units. URATOR IRVINGS: Can I just	2 3 4 5	ARBITRATION - VOLUME III Q All right. So we are now to The New York Times estimate. Exhibit 18. MR. RICHMAN: So we could be going for about 15 minutes or do you
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2 Q And w 3 calculate the 4 A Why? 5 Q Yes. 6 A Becau 7 ARBIT 8 ask: How i 9 maybe we d 10 would be th 11 MR. RI 12 last one und	RATION - VOLUME III why did you use shifts to payment period? se it's the base units. RATOR IRVINGS: Can I just many of these examples, and can agree that the dialogue he same? ICHMAN: That's the real til we go into	2 3 4 5 6 7 8 9 10	ARBITRATION - VOLUME III Q All right. So we are now to The New York Times estimate. Exhibit 18. MR. RICHMAN: So we could be going for about 15 minutes or do you want to break now? MR. MILLER: Maybe we should break now. MR. RICHMAN: That's fine. ARBITRATOR IRVINGS: That's fine. Could we do 45 minutes? MR. MILLER: Yes.
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	Page 646		Page 647
1	ARBITRATION - VOLUME III	1	
2	BY MR. RICHMAN:	2	ARBITRATION - VOLUME III
3	Q Ms. Egan, before we get to	3	preliminary copy to Mr. Schwartz? A Mr. Schwartz, yes.
4	Exhibit 18, have you ever testified before?	4	Q And then he asked that you provide
5	A No.	5	a payment schedule?
6	Q Not in an arbitration?	6	A Yes.
7	A No.	7	Q Did you ask the Fund for
8	Q At a court proceeding?	8	information to prepare Exhibit 18?
9	A No.	9	A Yes.
10	Q So let's look at Exhibit 18.	10	Q And what did you ask for?
11	I think it's been well documented	11	A We asked for everything we needed
12	so far that you prepared this estimate,	12	which was contribution information, shifts,
13	correct?	13	base units, contribution rates. I think
14	A Yes.	14	that was it.
15	Q And did you prepare the payment	15	Q And did you get everything you
16	schedule for the estimate?	16	needed?
17	A Originally, no.	17	A No.
18	Q Originally, no. Okay.	18	Q What did you need that you did not
19	How did it come that you prepared	19	get?
20	the payment schedule later?	20	A We didn't get the contribution rate
21	A We provided a preliminary copy and	21	information.
22	Murray Schwartz had asked us to include a	22	Q And why was that important for you
23	payment schedule.	23	to get?
24	Q So I just want to make sure I	24	A Because to be able to do the
25	understood your testimony. You provided a	25	payment schedule, you needed contribution
	understood your testimony. You provided a		F = J = = = = = = = = = = = = = = = = =
	Page 648		
	rage 040		Page 649
1	_	1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III rate history.		ARBITRATION - VOLUME III And what did you actually do, and
2	ARBITRATION - VOLUME III	2	ARBITRATION - VOLUME III And what did you actually do, and take it through step by step, to estimate
2 3	ARBITRATION - VOLUME III rate history. Q Okay. And, but you asked for that	2 3	ARBITRATION - VOLUME III And what did you actually do, and
2 3 4	ARBITRATION - VOLUME III rate history. Q Okay. And, but you asked for that from the Fund?	2 3 4	ARBITRATION - VOLUME III And what did you actually do, and take it through step by step, to estimate the numbers on this page? A We knew that the allocation of the
2 3 4 5	ARBITRATION - VOLUME III rate history. Q Okay. And, but you asked for that from the Fund? A Yes. Q Did anyone in the Fund tell you why	2 3 4 5	ARBITRATION - VOLUME III And what did you actually do, and take it through step by step, to estimate the numbers on this page? A We knew that the allocation of the wage rate was 6 percent, 6 and a half
2 3 4 5 6	ARBITRATION - VOLUME III rate history. Q Okay. And, but you asked for that from the Fund? A Yes. Q Did anyone in the Fund tell you why they didn't give you that information?	2 3 4 5 6	ARBITRATION - VOLUME III And what did you actually do, and take it through step by step, to estimate the numbers on this page? A We knew that the allocation of the
2 3 4 5 6 7 8	ARBITRATION - VOLUME III rate history. Q Okay. And, but you asked for that from the Fund? A Yes. Q Did anyone in the Fund tell you why they didn't give you that information?	2 3 4 5 6 7 8	ARBITRATION - VOLUME III And what did you actually do, and take it through step by step, to estimate the numbers on this page? A We knew that the allocation of the wage rate was 6 percent, 6 and a half percent, 7 percent, and 8 percent. So what we did was we took the contribution to estimate a payment, we
2 3 4 5 6 7 8 9	ARBITRATION - VOLUME III rate history. Q Okay. And, but you asked for that from the Fund? A Yes. Q Did anyone in the Fund tell you why they didn't give you that information? A No. I didn't get a reason. Q You just didn't get it? A I just didn't get it. I'm trying	2 3 4 5 6 7 8 9	ARBITRATION - VOLUME III And what did you actually do, and take it through step by step, to estimate the numbers on this page? A We knew that the allocation of the wage rate was 6 percent, 6 and a half percent, 7 percent, and 8 percent. So what we did was we took the contribution to estimate a payment, we took the contribution information and
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III rate history. Q Okay. And, but you asked for that from the Fund? A Yes. Q Did anyone in the Fund tell you why they didn't give you that information? A No. I didn't get a reason. Q You just didn't get it? A I just didn't get it. I'm trying to remember. Q I'm sorry? A I'm trying to remember, recollect the sequence of events. Q Okay. So let's turn to Page 16 of Exhibit 18, the last page. And you see the note on the bottom? A Uh-huh. Q Did you write that? A Yes. Q What were you saying in the note? A The note was attempting to say that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III And what did you actually do, and take it through step by step, to estimate the numbers on this page? A We knew that the allocation of the wage rate was 6 percent, 6 and a half percent, 7 percent, and 8 percent. So what we did was we took the contribution to estimate a payment, we took the contribution information and divided it by that allocation to get to simulate kind of a wage, and trying to piece those pieces together come up with what could be an estimate of a payment, an annual payment. Q And what did you do to piece those pieces together? A We multiplied the highest in one category by the highest average in the other category to get a similar number that you would get to an annual payment. Q Okay. Did anybody ask you a question

Page 650	Page 651
1 ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III
Q And let's take a look Exhibit 3.	2 Q And did you estimate it in the same
This is the second estimate that	fashion as the other one?
you did for The New York Times, correct?	4 A Yes.
5 A Yes.	5 MR. MILLER: Thank you.
6 Q And did you have all the	6 MR. RICHMAN: Okay.
⁷ information you needed in order to prepare	⁷ BY MR. RICHMAN:
8 what's been marked Exhibit 3?	8 Q And did you for Exhibit 3, did
⁹ A I don't think we had that there,	you do a payment schedule initially?
either.	A That, I don't remember exactly.
Q And let's just focus in. What is	That one, I don't remember.
it that you didn't have?	Q And the note on Exhibit 3 on
A The actual contribution rates.	Page 16, that is the same note from
Q Okay. And you did have shift	Exhibit 16?
information?	15 A Basically, yes.
A Yes.	Q And you wrote both?
Q And that's both for doing the	A Yes.
calculation for Exhibit 3 and Exhibit 18?	Q And the purpose of you writing both
19 A Yes.	was the same?
Q And why was it that you couldn't do	A Yes.
the calculation without the contribution	Q Now, let's take a look at
rate information?	Exhibit 1.
A The same reason for the other one	23 If you take a look, there is a
is it's part of the actual calculation. So	payment schedule in this exhibit, is there
we tried to estimate it.	not? Apparently FUND-743, I'm told.
Page 652	Page 653
_	_
_	_
1 ARBITRATION - VOLUME III 2 A Yes.	1 ARBITRATION - VOLUME III 2 base units.
ARBITRATION - VOLUME III A Yes. Q And did you have all the	1 ARBITRATION - VOLUME III 2 base units.
ARBITRATION - VOLUME III A Yes. Q And did you have all the	1 ARBITRATION - VOLUME III 2 base units. 3 Q Why is the word "hours" in there?
ARBITRATION - VOLUME III A Yes. Q And did you have all the information you needed to prepare this?	1 ARBITRATION - VOLUME III 2 base units. 3 Q Why is the word "hours" in there? 4 A I think it's because the shifts are
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	5 (5)		5 655
	Page 654		Page 655
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	Q So you don't ever remember changing	2	A It's an educated guess here.
3	to 7 and a half percent for this Pension	3	Q Okay.
4	Fund?	4	But why did you you said it
5	A We could have, but I don't remember	5	could have been between the 25th and the
6	and I'd have to look it up.	6	75th percentile
7	Q Okay. You described briefly in	7	A Because I didn't think it was the
8	response to questions from Mr. Miller how	8	top or the bottom.
9	you chose 7 and a half percent.	9	Q Do you know whether 6 and a half
10	Was the interest assumption, your	10	percent would have been a reasonable
11	best estimate, a single number?	11	investment assumption for this Fund?
12	A It's a range of numbers and you are	12	A It could be, without looking at it.
13	picking a number within a range.	13	It could be.
14	Q Okay. And where did 7 and a half	14	Q Do you know the percentage of
15	percent fall within the range that you were	15	multiemployer pension plans that use Segal
16	picking?	16	as the actuary?
17	A I'm not sure exactly where.	17	A My understanding, it's
18	Somewhere in it. I'm not sure exactly.	18	approximately 30 percent in the US.
19	Q Do you know whether it was the	19	Q And is that in a certain time
20	50th percentile?	20	period?
21	A Could have been anywhere between	21	A I think that was a survey maybe
22	the 25th and the 75th. I'm not sure	22	back in 2011 done.
23	exactly.	23	Q And do you have an estimate as to
24	Q Why do you say the 25th and	24	what percentage of the actuaries at Segal
25	75th percentile?	25	used the Segal blend for withdrawal
	Page 656		Page 657
1	_	1	Page 657 ARBITRATION - VOLUME III
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III liability purposes back in 2011?		ARBITRATION - VOLUME III Q If you use a 6 and a half percent
2	ARBITRATION - VOLUME III liability purposes back in 2011? A I would say a very large	2	ARBITRATION - VOLUME III
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2 3 4 5	ARBITRATION - VOLUME III liability purposes back in 2011? A I would say a very large percentage. Could be at least 80 percent, if not more. I'm guessing. Q We don't want you to guess.	2 3 4 5	ARBITRATION - VOLUME III Q If you use a 6 and a half percent interest assumption, investment assumption, how would that affect a determination as
2 3 4 5 6	ARBITRATION - VOLUME III liability purposes back in 2011? A I would say a very large percentage. Could be at least 80 percent, if not more. I'm guessing. Q We don't want you to guess. Now, there was a period of time the	2 3 4 5 6	ARBITRATION - VOLUME III Q If you use a 6 and a half percent interest assumption, investment assumption, how would that affect a determination as opposed to 7 and a half percent as to whether this plan was in the green or the
2 3 4 5 6 7	ARBITRATION - VOLUME III liability purposes back in 2011? A I would say a very large percentage. Could be at least 80 percent, if not more. I'm guessing. Q We don't want you to guess. Now, there was a period of time the Fund was in the yellow zone, correct?	2 3 4 5 6 7	ARBITRATION - VOLUME III Q If you use a 6 and a half percent interest assumption, investment assumption, how would that affect a determination as opposed to 7 and a half percent as to whether this plan was in the green or the yellow zone? A It would make them more
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1	ARBITRATION - VOLUME III	1 ARBITRATION - VOLUME III
2	of what a reasonable estimate would be for	and I'll come back for redirect
3	an investment assumption for the Pension	³ questions.
4	Fund?	4 (Pause.)
5	MR. MILLER: Objection. When?	5 MR. MILLER: Back on the
6	MR. RICHMAN: Let's take	6 record.
7	May 31, 2009.	7 REDIRECT EXAMINATION BY MR. MILLER:
8	ARBITRATOR IRVINGS: Give me	8 Q Ms. Egan, in the testimony that you
9	the question again, please.	⁹ just went through with Mr. Richman, I think
10	BY MR. RICHMAN:	you testified that there was some
11	Q Can you give us a range for what a	correspondence from the Fund that led you to
12	reasonable estimate would be for an	believe that shifts were CBUs.
13	investment assumption for the Pension Plan	Do you remember that testimony?
14	as of May 31, 2009?	14 A Yes.
15	A That's difficult to say without	Q Can you identify the correspondence
16	looking at anything.	from the Fund that led you to believe that
17	MR. MILLER: Objection. Based	shifts were CBUs?
18	on what she said, it's necessarily	18 A Whatever information we received
19	going to be speculation from here on	from the Fund administrator regarding the
20	out.	base units he would give in shifts.
21	ARBITRATOR IRVINGS: Yeah,	Q Are you referring to the wage rate
22	doesn't help me.	information that we previously looked at?
23	MR. RICHMAN: Okay.	A He would give us shifts when we
24	I think that's it.	asked for base units.
25	MR. MILLER: Take five minutes	Q In connection with your preparation
		7 1 1
	Page 660	Page 661
		rage 001
1	ARRITRATION - VOLUME III	_
1 2	ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
1 2 3	of withdrawal liability assessments, did you	1 ARBITRATION - VOLUME III 2 the discussion was on audits that were maybe
2	of withdrawal liability assessments, did you ask for shifts or did you ask for base	ARBITRATION - VOLUME III the discussion was on audits that were maybe made on an employer on how their
2	of withdrawal liability assessments, did you ask for shifts or did you ask for base units?	ARBITRATION - VOLUME III the discussion was on audits that were maybe made on an employer on how their contributions were made.
2 3 4	of withdrawal liability assessments, did you ask for shifts or did you ask for base units? A We asked for base units that were	ARBITRATION - VOLUME III the discussion was on audits that were maybe made on an employer on how their contributions were made. Q So shifts would come up in the
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Page 662 Page 663 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 Q In your judgment, does a Mr. Richman. 3 3 contribution rate have to be expressed as a And in those withdrawal liability 4 4 dollar figure? assessments or estimates in which the 5 5 My understanding is that dollars payment schedule was based on shifts, the 6 6 are being put into the Pension Fund. Fund office had provided you with the wage 7 7 That's not the question I asked. rate information, correct? 8 8 My question was: Is it your Yes. Α 9 9 understanding that a contribution rate has O But in providing the estimates for 10 10 to be expressed as a dollar figure? The New York Times, the Fund office did not 11 A I would think it would be in most 11 provide you with the wage rate information, 12 12 correct? cases. 13 13 Do you think it has to be in all Q Α Yes. 14 14 cases? O Why don't you turn your attention 15 15 I don't know how else it would be to Exhibit 99, which we previously -- which Α 16 16 you previously went over with Mr. Richman. expressed. 17 17 Okay. Q It was a withdrawal liability estimate for 18 So your testimony is you think a 18 Raritan. 19 19 contribution rate in all instances has to be Was this withdrawal liability 20 20 expressed as a dollar figure, correct? estimate prepared in connection with a 21 A I'm not sure how else it would be 21 possible partial or a complete withdrawal? 22 22 expressed. My understanding, it was a complete 23 You went through a number of older 23 O withdrawal. 24 withdrawal liability assessments and 24 And then the very next exhibit is 25 estimates of withdrawal liability with 25 the withdrawal liability calculation for the Page 664 Page 665 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 Daily Racing Form. as opposed to wages would be in connection 3 3 Was that a partial or complete with the payment schedule calculation, 4 4 correct? withdrawal? 5 5 A Yes. Α Which exhibit? 6 6 Q But in connection with a potential O Daily Racing Form is 100. 7 Oh, okay. 7 partial withdrawal based on a 70 percent 8 8 My understanding, this is a decline, the use of shifts as opposed to 9 9 complete withdrawal. total wages could indeed determine whether 10 And the very next exhibit is 10 there was a partial withdrawal, correct? 11 11 Passaic County News. Obviously, that would Under the 70 percent decline? Α 12 12 be Exhibit 101. Q Yes. 13 13 And was that withdrawal liability Α Yes. 14 14 calculation based on a partial or a 0 So in the context of a partial 15 complete? 15 withdrawal, use of shifts as opposed to 16 16 A My understanding, it's a complete. wages as CBUs had a much greater 17 17 consequence, correct? In fact, in connection with all of 18 18 the withdrawal liability estimates or Α Yes. 19 19 assessments that you went through other than O Getting back to complete 20 El Diario, all of them related to complete 20 withdrawals and the determination of a 21 withdrawals, correct? 21 payment schedule in connection with a 22 22 complete withdrawal, do you know whether the Α Yes. 23 23 consequence of using shifts rather than And in the context of a complete 24 24 wages as CBUs would be more or less helpful withdrawal, the only consequence to the 25 25 withdrawing employer of using shifts as CBUs to the employer in connection with the

	Page 666		Page 667
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	payment schedule?	2	El Diario which you briefly discussed.
3	A I have no idea, more or less.	3	And am I correct that withdrawal
4	Q And by "more or less," I meant,	4	liability calculation for El Diario was in
5	would it result in a higher quarterly	5	the context of a possible partial
6	payment or a lesser quarterly payment?	6	withdrawal?
7	ARBITRATOR IRVINGS: I'm not	7	A Well, no, it was a calculation. We
8	understanding the question. Take me	8	were asked just to do a complete withdrawal.
9	through it again.	9	Q But you referred to a trustees
10	MR. MILLER: Sure.	10	meeting in which the subject of a partial
11	BY MR. MILLER:	11	withdrawal by El Diario did come up,
12	Q In connection with the development	12	correct?
13	of a quarterly payment schedule, that	13	A Yes.
14	payment schedule has to necessarily be based	14	Q And that discussion at that
15	on CBUs, correct?	15	trustees meeting about a possible partial
16	A Uh-huh.	16	withdraw was in connection with a partial
17	Q And do you know whether use of	17	withdrawal relating to a 70 percent decline
18	shifts as opposed to wages would ordinarily	18	in CBUs, correct?
19	in connection with this Fund result in a	19	A Whether they thought the 70 percent
20	higher or a lower quarterly payment amount?	20	decline was a possible reason, I don't know,
21	A I don't know that I could tell it	21	but it was brought up that the shifts should
22	would be one direction or the other.	22	be looked at. And that's what you would do
23	Q Okay.	23	when you do a 70 percent decline.
24	Now let's turn to Exhibit 107,	24	Q And, indeed, you testified that
25	which is the withdrawal liability for	25	there was a discussion at that trustees
	Page 668		Page 669
1	Page 668 ARBITRATION - VOLUME III	1	Page 669 ARBITRATION - VOLUME III
1 2	-	1 2	
	ARBITRATION - VOLUME III		ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III meeting about the need to track shifts,	2	ARBITRATION - VOLUME III it's a range that you are looking at and you
2 3	ARBITRATION - VOLUME III meeting about the need to track shifts, correct?	2	ARBITRATION - VOLUME III it's a range that you are looking at and you are picking a number in the range. Q In connection with the selection of
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Page 670 Page 671 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 range and then selected 7.5 percent within that meeting. And we were not provided 3 3 that range or merely selected 7.5 percent as those minutes, nor were we provided with 4 4 the best estimate, correct? a list of attorney/client protected 5 5 Say that again. information. Α 6 6 Am I correct that you cannot So we may well file a motion to 7 7 remember whether you either calculated a strike and I'll lay it all out for you, 8 8 range and then selected 7.5 percent within and then the Fund can obviously reply in 9 9 that range or merely selected 7.5 percent as 10 10 your best estimate? MR. RICHMAN: If he wants to 11 11 In 2011? Α file a motion to strike, I can't stop 12 12 O Yes. him. 13 13 A Yes. But the minutes were not provided. 14 14 O Yes, meaning you can't remember? The fact is that both parties were asked 15 15 to provide minutes, and I'm happy to Yes. 16 16 MR. MILLER: Mr. Arbitrator, I address this in a response to his motion. 17 17 do not have any additional questions. It's probably better than doing it right 18 18 now while we have an hour and a half But I do want to advise you and 19 19 Mr. Richman that in all probability, left. 20 20 ARBITRATOR IRVINGS: That's we're going to file a motion to strike 21 21 Ms. Egan's testimony respecting what fine 22 22 occurred at that trustees meeting Thank you. 23 23 MR. MILLER: Thank you. involving the discussion of El Diario on 24 24 the ground that we requested minutes that ARBITRATOR IRVINGS: Do you 25 25 would have encompassed the minutes of have anything further? Page 672 Page 673 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 MR. RICHMAN: No, I don't. have six weeks before March 26th, and 3 3 So we had a discussion with you you can go, if you want to depose 4 4 about Ms. Albergo, and what you said Ms. Albergo, we have found her now and 5 5 during that conference call was that at we'll attempt to make her available to 6 6 that point in time that you were not you for a deposition. And what it says 7 7 going to issue a Subpoena for specifically -- and this is an e-mail on 8 8 Ms. Albergo, that it could be -- and your 2-12-2015. And part of it is an e-mail 9 9 words were "revisited" and that you from --10 10 suggested that the parties attempt to ARBITRATOR IRVINGS: Let me ask 11 11 you because I'm getting anxious. We work out a stipulation to avoid the 12 12 necessity to bring in Ms. Albergo. have her here. Is there any chance 13 13 And what we did is Mr. Miller or we can do this by phone tomorrow? 14 14 his group gave us a stipulation. We MR. RICHMAN: Yes. 15 15 provided a counter-stipulation. No one MR. MILLER: Yes. 16 16 MR. RICHMAN: Not tomorrow. is going to be shocked to hear that the 17 17 MR. MILLER: I'm available stipulations didn't match up and didn't 18 18 deal with an issue that we would like her Thursday. 19 19 to testify about. MR. RICHMAN: The rest of the 20 20 What I offered to Mr. Miller about week I'm toasted. And I mean 21 21 right after the last hearing date, I said toasted. 22 22 ARBITRATOR IRVINGS: When can to him -- and I actually wrote a letter, 23 23 so we'll get the letter and have it 24 24 exactly. MR. RICHMAN: I can do it next 25 25 So the essence of the letter is we week. Monday.

	Page 674		Page 675
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	MR. MILLER: Monday.	2	34-plus-year period. I was with them from
3	ARBITRATOR IRVINGS: I think	3	May of 1977 through August of 2011. During
4	Monday works for me.	4	the last 17 and a half years, I was the
5	MR. MILLER: Let's make it 4:30	5	chief actuary of the US retirement business.
6	on Monday.	6	And my last title was senior partner.
7	ARBITRATOR IRVINGS: Just send	7	Prior to that, I was with
8	me the documentation. You don't need	8	Prudential Insurance Company of America for
9	cover e-mails. We'll do it on the	9	just under four years.
10	phone.	10	Prior to that, I was in graduate
11	ETHAN EMANUEL KRA,	11	school at Yale University where I also
12	having been first duly	12	taught calculus.
13	affirmed by Arbitrator Irvings, was	13	Q Okay.
14	examined and testified as follows:	14	A I don't think you want anything
15	DIRECT EXAMINATION BY MR. RICHMAN:	15	further back.
16	Q Can you state your full name for	16	Q No, I don't want to know any lawn
17	the record, please.	17	mowing jobs.
18	A Ethan Emanuel Kra.	18	Can you give the Arbitrator a brief
19	Q Can you give us a brief review of	19	discussion of your education.
20	your work history?	20	A Bachelor, BA, MA, MPhil and Ph.D.,
21	A Working backwards, I'm currently	21	all in mathematics from Yale University,
22	the principal of Ethan E. Kra Actuarial	22	summa cum laude and phi beta kappa honors
23	Services LLC since September 2011.	23	with exceptional distinction in mathematics.
24 25	Previous to that, I was with Mercer	24 25	Then I became a fellow of the
23	which underwent various names over a	23	Society of Actuaries. A member of the
	Page 676		Page 677
1	-	1	-
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III American Academy of Actuaries and enrolled		ARBITRATION - VOLUME III I worked on the District Counsel 37
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1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	chief actuary or during the time you were	2	Arbitration between Local 863, I testified
3	the chief actuary?	3	in an arbitration and that dealt with
4	A Sorry. I don't have numbers. I	4	withdrawal liability.
5	would have to estimate somewhere, in the	5	You only want testimony, not
6	US-enrolled actuaries, around 400.	6	depositions, I assume?
7	Q Okay.	7	Q Anything.
8	A But that's an estimate. There were	8	A Waste Management was a deposition
9	about 4,000 active actuaries in America, and	9	dealing with withdrawal liability.
10	Mercer had about 10 percent of them.	10	On the second page, the second
11	Q Have you testified in withdrawal	11	case, Croop, C-R-O-O-P, dealt with
12	liability arbitrations previously?	12	withdrawal liability. I don't recall the
13	A Yes.	13	details of the case. It was over a decade
14	Q Can you just tell us how many	14	ago and it was just an expert report and we
15	without going through them?	15	never got beyond that.
16	A Oh, well, it would help if I could	16	And the last case, Vornado versus
17	have the list of cases from my report.	17	Trustees, were affidavits and depositions.
18	Q Okay. Let me show you Exhibit 11.	18	I don't believe I was ever deposed. And
19	A Going down the list	19	that was a case involving withdrawal
20	Q And where are you looking?	20	liability and partition.
21	A I'm looking at Exhibit C, which is	21	Q Now, did you prepare Exhibit 11?
22	the last two pages of the exhibit, where	22	A Yes.
23	I've actually testified where there were	23	Q And did anyone provide you
24	multiemployer issues involved.	24	assistance in preparing Exhibit 11?
25	If you go down to The Matter of	25	A I may have had assistance with
	D 000		
	Page 680		Page 681
1	ARBITRATION - VOLUME III	1	
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch		ARBITRATION - VOLUME III deposition?
2	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have	2	ARBITRATION - VOLUME III deposition? A Yes, I did.
2	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague,	2	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at
2 3 4	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will	2 3 4	ARBITRATION - VOLUME III deposition? A Yes, I did.
2 3 4 5	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another	2 3 4 5	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing?
2 3 4 5 6	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will	2 3 4 5 6	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did.
2 3 4 5 6 7	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it	2 3 4 5 6 7 8	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for
2 3 4 5 6 7 8 9	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that	2 3 4 5 6 7 8 9	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability?
2 3 4 5 6 7 8 9 10	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't	2 3 4 5 6 7 8 9 10	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I
2 3 4 5 6 7 8 9 10 11	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to	2 3 4 5 6 7 8 9 10 11	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9.	2 3 4 5 6 7 8 9 10 11 12 13 14	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have. Q And what is that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are reasonable, taking into account the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have. Q And what is that? A That is the Revised Expert Report	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are reasonable, taking into account the experience of the plan, reasonable
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have. Q And what is that? A That is the Revised Expert Report of Darren French, which I received after I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are reasonable, taking into account the experience of the plan, reasonable expectations which in combination offer the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have. Q And what is that? A That is the Revised Expert Report of Darren French, which I received after I prepared my report.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are reasonable, taking into account the experience of the plan, reasonable expectations which in combination offer the actuary's best estimate of anticipated
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have. Q And what is that? A That is the Revised Expert Report of Darren French, which I received after I prepared my report. Q And did you review the revised	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are reasonable, taking into account the experience of the plan, reasonable expectations which in combination offer the actuary's best estimate of anticipated experience under the plan, or actuarial
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have. Q And what is that? A That is the Revised Expert Report of Darren French, which I received after I prepared my report. Q And did you review the revised report of Darren French?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are reasonable, taking into account the experience of the plan, reasonable expectations which in combination offer the actuary's best estimate of anticipated experience under the plan, or actuarial assumptions and methods set forth in the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME III fixing up some typos, but they didn't catch them all. And my apologies. And I did have my report peer-reviewed by a colleague, another actuary. My policy is that I will not issue a report without having another actuary review the report to make sure it makes sense, holds together. And he found some he did catch some of the typos. He will often point out that something that he reads he doesn't understand why I said and he needs me to clarify it, but there were no substantial changes to this report. Q Let's take a look at Exhibit 9. Have you seen that before? A Yes, I have. Q And what is that? A That is the Revised Expert Report of Darren French, which I received after I prepared my report. Q And did you review the revised	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME III deposition? A Yes, I did. Q And did you hear him testify at this hearing? A Yes, I did. Q What is the standard for determining whether actuarial assumptions are appropriate for calculating withdrawal liability? A If I could refer to my report, I think I cite the relevant section. ERISA 4213, which is cited on Page 6 of my report in Tab 11. Section A describes actuarial assumptions. And they must be assumptions and methods which in the aggregate are reasonable, taking into account the experience of the plan, reasonable expectations which in combination offer the actuary's best estimate of anticipated experience under the plan, or actuarial

	Page 682		Page 683
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	liability.	² deal	ling with multiemployer pension plans
3	Q When the term "corporation" is used		n they were looking at withdrawal
4	there, do you know what that refers to?		ility assessments or potential
5	A The Pension Benefit Guarantee		ndrawal liability.
6	Corporation, an agency of the United States	6 Q	
7	government.	7	And in your opinion
8	Q Sometimes called the PBGC?	8 A	
9	A Yes.	9 Q	
10	Q And so has the PBGC set forth	10 A	1 0150 1100 10 1000 11 0110 100111 11
11	regulations for determining an employer's		en it was enacted because I was working on
12 13	withdrawal liability for determining the	Om	ted Mine Workers at the time and we had
13	actuarial assumptions and methods used in	10 0	xplain and figure out how that would
	determining an employer's withdrawal	arre	ct that large pension plan.
15 16	liability?	Q	
17	A Absent a mass withdrawal, they have	ana	ctuary to use the same interest
18	not issued any regulations for the actuarial	asst	imption for calculating withdrawal
19	assumptions on a withdrawal liability.		ility as the assumption for investment rns?
20	Q Does this provision in 4213 let me strike that.	20 A	
21	How are you familiar with	21 Q	
22	Section 4213?	22 A	-
23	A I had to use that when I was an	11	e that says to.
24	actuary handling multiemployer pension plans	24 Q	•
25	and when I advised corporate clients on	_	used for calculating withdrawal
	and when I devised corporate chems on		used for eurodianing withdrawar
	Page 684		Page 685
1	Page 684 ARBITRATION - VOLUME III	1	Page 685 ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III liability.	2	ARBITRATION - VOLUME III On Page 14, I analyze spouse age,
2	ARBITRATION - VOLUME III liability. What is the standard with respect	2 3 in 0	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between
2 3 4	ARBITRATION - VOLUME III liability. What is the standard with respect to each individual assumption for withdrawal	2 3 in 0 4 hus	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between bands and wives.
2 3 4 5	ARBITRATION - VOLUME III liability. What is the standard with respect to each individual assumption for withdrawal liability?	2 3 in c 4 hus 5	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between bands and wives. On that same page I analyzed
2 3 4 5 6	ARBITRATION - VOLUME III liability. What is the standard with respect to each individual assumption for withdrawal liability? A Under ERISA, ERISA requires that	2 3 in c 4 hus 5 6 per	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between bands and wives. On that same page I analyzed cent married.
2 3 4 5 6 7	ARBITRATION - VOLUME III liability. What is the standard with respect to each individual assumption for withdrawal liability? A Under ERISA, ERISA requires that the assumptions and methods in aggregate are	2 3 in c hus 5 6 per 7	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between bands and wives. On that same page I analyzed cent married. And then the other demographic
2 3 4 5 6 7 8	ARBITRATION - VOLUME III liability. What is the standard with respect to each individual assumption for withdrawal liability? A Under ERISA, ERISA requires that the assumptions and methods in aggregate are reasonable and in combination of the	2 3 in c hus 5 6 per 7 8 assis	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between bands and wives. On that same page I analyzed cent married. And then the other demographic cumptions were analyzed in the aggregate
2 3 4 5 6 7 8	ARBITRATION - VOLUME III liability. What is the standard with respect to each individual assumption for withdrawal liability? A Under ERISA, ERISA requires that the assumptions and methods in aggregate are reasonable and in combination of the actuary's best estimate of anticipated	2 3 in c hus 5 5 6 per 7 8 assi 9 bec	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between bands and wives. On that same page I analyzed cent married. And then the other demographic amptions were analyzed in the aggregate ause I did not have enough data about the
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2 3 4 5 6 7 8 9 10	ARBITRATION - VOLUME III liability. What is the standard with respect to each individual assumption for withdrawal liability? A Under ERISA, ERISA requires that the assumptions and methods in aggregate are reasonable and in combination of the actuary's best estimate of anticipated experience under the plan. There is no specificity here on	2 3 in c 4 hus 5 6 per 7 8 asss 9 becc 10 den 11 par	ARBITRATION - VOLUME III On Page 14, I analyze spouse age, other words, the relative ages between bands and wives. On that same page I analyzed cent married. And then the other demographic amptions were analyzed in the aggregate ause I did not have enough data about the nographics of this the group of ticipants in this Fund to do a specific
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ARBITRATION - VOLUME III Q So you mentioned the phrase " estimate range" required as described

ARBITRATION - VOLUME III used was a blended rate by the actuary, 7 and a half percent for some of the liabilities, 5.50/5.02 percent depending on duration for others of the liabilities.

I estimated that that assumption even independently would have fallen within the best estimate range required as described in the actuarial literature, actuarial standards of practice and the guidance given by the American Academy of Actuaries Pension Council on selection of economic interest rates and that the assumption was in the best estimate range.

I did more analysis and looked at what current interest rates were at that time, market interest rates.

And depending where in the risk spectrum one were going to look at the interest rates ranging from Treasuries to corporates, there was somewhere between 3 and a half to 7 percent, but more in the middle of that range would have been an interest rate based on relatively risk-free bonds or financial instruments.

Q So you mentioned the phrase "best estimate range" required as described in the actuarial literature, actuarial standards of practice and the guidance given by the American Academy of Actuaries Pension Council.

So let's see if we could take these one by one and tell us, if you could tell us, what is the best estimate range required as described in, first, generally, actuarial literature?

A Well, we would start with Actuarial Standard of Practice 27. I believe it's one of the documents, if we could tell me which number.

Q Ten.

A Ten.

On Page 2, Section 2.1, best estimate range is defined for each economic assumption. "The narrowest range within which the actuary recently anticipates that the actual results compounded over the measurement period are more likely than not to fall."

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So it's the narrowest range over the measurement period where you have 50 percent of the results falling when you do some type of stochastic modeling.

And then the practice note issued by the Pension Practice Council of the American Academy of Actuaries actually went through a derivation explaining to the actuaries how this could actually be calculated.

And generally --

Q Go ahead.

A And, generally, it's between the 25th and 75th percentiles of the distribution stochastic model.

Q And did you participate in that practice note?

A Yes. My name is actually on the practice note. I was on the Pension Practice Council at the time. I don't recall if I was vice-chair or just a member.

Q When you say in general it's between the 25th and 75th percentile, can you explain what that means?

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A The fund has different types of investments. They may have some international equity, domestic large cap, domestic small cap, value funds, growth funds, real estate, money market funds, short-term bond funds, long-term bond funds, international, high risk, all different types of investment classes. Every investment class.

Economists or market specialists based on various models would be able to determine the expected return, the geometric mean of return over a period of time. Most actuaries would use something like 30 years as the measurement period for the model, some may use 20.

And then you have a standard deviation, and that gives a range of results.

And then there are correlations of return between the different asset classes so that when some asset classes go up, others will generally go down. Others will go in sync.

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So a model will have the correlations, the geometric means as well as the standard deviations for the different asset classes and, whether it does it using mathematic formulas or stochastic model, will then model out the range of scenarios that can ensue and rank them from bottom to

And then you get percentiles. You find where the 5th percentile is where they're 5 percent below and 95 percent above, and that's the 5th percentile.

The 25th percentile is where 25 percent are below and 75 percent are above.

And the best estimate range is -in the practice note is generally going to be the 25th to 75th percentiles of that range of possible outcomes for the particular asset mix.

- O Okay. Can you just tell us what a stochastic model is?
- Stochastic model is something where it's equivalent of running a thousand or ten

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ARBITRATION - VOLUME III thousand scenarios, where you're effectively rolling the dice or taking a random number generated as CBUR (ph.) from the spectrum for each individual outcome such as for the bonds or for the CPI or for the

And then you get one scenario, one model running out for the 30 years. And then you redo it again on another scenario, and you run all the different scenarios and get the results over a 30-year period, what the compound effect of return is in each one of those scenarios, and then you rank them.

And that's the output of a stochastic model. Sometimes they're called Monte Carlo models.

It's a way of looking at the data to see what is the range of possible outcomes.

international equities.

Other times people will do it using the mathematic formulas that could be derived from the different inputs to actually just get it out exactly mathematically.

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There are three different approaches.

And, well, I'll tell you what. Let's go to the mortality assumption.

You took a look at that.

- Α Yes. Page 13.
- Okay. And what was your -- without going through your whole report, what was the conclusion you reached?

The conclusion I had was that for the May 31, 2009 liabilities, they were pretty close. There were two assumptions, two aspects of the assumption that were off but they were somewhat offsetting.

One is it did not reflect the blue-collar nature of the workers which would give us anticipated higher mortality and did not reflect mortality improvements from 2000 to 2009, nor any expected mortality improvements from 2009 to actual experience over the ensuing lifetimes of these individuals.

And the two factors of not projecting the mortalities improvements and

ARBITRATION - VOLUME III not reflecting the blue collar, I thought it would be pretty close to offsetting each other. So the Mortality Table was pretty close to spot on.

- Okay. And what about the spouse Q age?
- Spouse age was right in the middle of the age where actuaries have the assumption. Absent data of the individuals in this plan, I would say it's a very reasonable assumption.
 - 0 And what about percent married?
- Α Percent married, I believe the actuary understated the percentage married within the population. Under normal circumstances, that would slightly understate the liabilities.

Because this plan has a death benefit with respect to nonmarried individuals, the amount of understatement becomes much smaller, but there is a small understatement of liability.

Okay. And the other demographic assumptions?

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A When I looked at the history of the demographic experience in the valuation reports over a nine-year period, I had to exclude two of those reports because of extraordinary events that occurred during the year.

There were demographic items such as a major shutdown which led to a turnover of population, people terminating employment that would not be in the norm over time.

And the other was a death audit where they went through and actually checked to make sure that all the retirees were alive and nobody was cashing checks. So it's a death audit.

And they found a fair number of people who were dead that they did not know they were dead, and as a result the liabilities went down. So that's a nonrecurring event that the actuary could not anticipate.

So excluding those two years and looking at the other seven years, the actuarial demographic experience was very

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ARBITRATION - VOLUME III close to a wash, which would mean that the assumptions in the aggregate for demographics were pretty close to spot on, with one exception. There was no allowance for mortality improvements from the date of the valuation to the expected for the rest of the life expectancy of the participants.

So to that extent, there was a few percent understatement of plan liabilities.

Q Okay.

Did you reach a conclusion as to whether the actuarial assumptions in the aggregate used by the Segal Company to calculate The New York Times' withdrawal liability were reasonable?

- A I believe they were reasonable in the aggregate.
- Q Now, Mr. French testified that the Segal blend method is unreasonable because it does not use a fund's investment return assumption to calculate withdrawal liability.

Do you recall that?

A Yes.

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Q And it's also in his Exhibit 9 -not his Exhibit 9, in Exhibit 9 which is his report.

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Do you agree with his opinion?

A No.

O Why not?

A There's no requirement that the two assumptions be the same.

O And let's take a look at ASOP 27.

A Which is Exhibit 10?

Q Yes.

And can you tell us in looking at the ASOP 27 why it is your opinion that the investment assumption and the interest assumption for calculating withdrawal liability don't need to be the same?

A Well, first of all, ASOP 27 has a Section 3.3, General Considerations.

"The actuary should consider the following folks when identifying which types of economic assumptions to use for a specific measurement and when selecting those economic assumptions that will be used, A, the purpose and nature of the

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ARBITRATION - VOLUME III measurement."

So if you have two measurements of the same cash flow stream which have different purposes and different natures, perforce you may have different assumptions.

O Okav.

And how does that apply to the issue of using an interest assumption that's different than the investment return assumption for calculating withdrawal liability?

A When you have withdrawal liability, the withdrawing employer is given a final number with no risk.

If the investments underperform, you cannot go back to that withdrawing employer with another bill.

If the investment is outperforming, the withdrawing employer gets no credit.

But it is a final settlement of an obligation to provide for certain benefits.

In an ongoing plan, all of the ongoing employers share in the upside, share in the downside.

Page 698 Page 699 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 your walls with your stock certificates. If the fund underperforms, they pay 3 3 more. If the fund overperforms, they pay So because there's risks, the 4 4 less. They take risk, they take the market demands a higher expected return. 5 5 Where there's no risk, the marketplace will benefit. 6 6 accept a lower return on the investment. With withdrawal liability, the 7 7 withdrawing employer has no risk and has a A thousand dollars' worth of stock 8 8 fixed schedule to pay for fixed benefits. and a thousand dollars' worth of bonds can 9 9 And are you familiar with the both be bought for a thousand dollars. The 10 10 concept of risk premium? bonds have a lower expected return, the 11 stocks have a higher expected return. 11 Yes Α 12 12 They're both worth a thousand dollars. O And what is that? 13 13 Okay. Risk premium is the higher expected 14 14 return one gets on risky investments. How do you determine what the cost 15 15 Equities have higher expected of the price of risk is? 16 16 I don't. The market does. Α return than bonds. Equities have higher 17 17 Q Okay. How does it do that? risk. 18 Through the marketplace, through 18 Α If you have US Treasuries, ten-year 19 19 the stock markets, the bond markets, Wall Treasuries, they will pay coupons for 20 20 Street. ten years and pay off in ten years. You 21 21 So you have an investment, the assume the United States government will not 22 22 market equilibrium will set a price for that default. Never has. 23 23 investment. Equities, stocks go up, stocks go 24 24 If you have -- let's compare two down. Some companies go out of business. 25 25 bonds, a junk bond and a Treasury. One's a If you bought Enron in 2000, you could paper Page 700 Page 701 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 riskier investment than the other. It has a in fact over the past 15 years, they've lost 3 3 higher expected return, even after allowing the bet. 4 4 for the default risk. 0 Who's lost the bet? 5 5 And if you were to take the Α The ongoing employers have lost the 6 6 bet and they have to contribute more. expected cash flow, adjust it for default on 7 7 the junk bond and discount that back to Had the market done well, they 8 8 today, the Treasury rate, you would get a would contribute less. They're taking all 9 9 higher value than the Treasury. That of the downside for which they get the 10 10 difference is the risk premium. upside. 11 11 Otherwise, there's an arbitrage Okay. 12 12 Why should employers who withdraw, that the exiting employer is benefitting 13 13 as I understand from your testimony, not get from. 14 14 any benefit from the risk premium? Q Okay. 15 15 Does the Segal blend penalize A A withdrawing employer has not 16 16 borne the risk, will not pay more if the withdrawing employer by using a lower 17 17 interest rate in today's interest rate investments do poorly. 18 18 If an employer withdrew in 2000, environment for calculating withdrawal 19 19 January 1, 2000, and paid its withdrawal liability? 20 liability based on bonds, the fund could 20 A I believe the Segal blend method 21 21 have bought bonds and had no risk. benefits the withdrawing employer because it 22 22 doesn't use the market interest rate for the If the fund bought equities, the 23 23 fund had risk and the employers who were entire liability. 24 24 continuing to contribute deciding Q And why is that? 25 25 effectively to take that risk, good or bad, Because the Segal blended method in

Page 702 Page 703 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 The New York Times -- I forgot whether it and I'm not going to read it, but can you 3 3 was 52/48 or 48/52, but for about half the summarize very briefly what it says? 4 4 liabilities, it used a market interest rate. It says -- it's discussing the 5 5 and for about half the liabilities, it used investment return assumption and the 6 6 the valuation 7 and a half percent interest discount rate assumption. Where the 7 7 investment return anticipates returns on the 8 8 A fair, equitable settlement would plan's current and future assets, discount 9 9 have been using the market interest rate for rate is used to determine present values of 10 10 the entire liability in assessing the future payment streams. 11 11 withdrawal liability. It says generally but not all 12 12 So Segal actually came up with a cases, the appropriate discount rate is the 13 13 lower withdrawal liability than a true same as the investment return assumption. 14 14 market-based calculation. There are cases where it will not be. And 15 15 So in the exiting from this Fund, this paragraph gives two examples where it 16 The New York Times was able to put risk on 16 may not be, but they are not the exclusive 17 17 the remaining employers. examples. 18 18 Q Okav. Q How do you know they are not the 19 19 Let's take a look at 3.6 of exclusive examples? 20 20 ASOP 27. That's Exhibit 10. First of all, it says for some 21 21 A Okay. Page 5? purposes. It doesn't say for these purposes 22 Page 5. Yes. 22 or something else exclusively. 23 23 Are you familiar with 3.6? I mean, if they were the only two, 24 2.4 I think the language would have been Yes. 25 25 I'm not going to ask you to read it different. The drafters of ASOPs are very 0 Page 704 Page 705 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 meticulous in their choice of language, settlement of bond-type rate but nothing in 3 3 having been on one of the committees of between, according to many auditors. 4 4 ASOPs. There are a number of ASOPs where my Okav. 5 5 name appears, and I know how careful the So Mr. French has opined that the 6 6 committees are in the wordsmithing of these use of the investment assumption to 7 7 ASOPs. calculate withdrawal liability neither 8 8 So if it says for some purposes, it advantages or disadvantages a withdrawing 9 9 does not mean exclusively only for those employer, or the Fund for that matter, 10 10 purposes. because there is the same chance that the 11 Secondly, in Section 3.6.2, 11 Pension Fund is going to earn an investment 12 12 construction being the investment return return above or below the interest 13 13 range, it describes two very different assumption. 14 methods which can be used. 14 Do you agree with that statement? 15 And the cash flow matching method 15 I unequivocably disagree. 16 16 is very comparable to the method I described And why is that? 17 which would be how I would select the 17 Let's consider May 31, 2009. And 18 18 withdrawal liability discount rate. for argument's sake, let's assume that the 19 19 There are a number of situations. PBGC rate was the market rate. And for 20 For example, FAS 35, Statement of Financial 20 simplicity, we'll take the 5.50 percent that 21 Accounting Standards Number 35, which has 21 they used for the first 20 years as if it 22 22 subsequently been renumbered and don't ask were for all years. Not saying that's the 23 me the new number, which allows as 23 number but just for simplicity.

That would indicate that you could

essentially buy bonds or other defeasement

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interpreted by the audit profession either

the expected rate of return on assets or a

Page 706 ARBITRATION - VOLUME III instruments which could settle the obligation for the portion of the liability attributable to The New York Times. To the extent that you took any other investment portfolio and looked to do the following: I'm going to invest in whatever the Fund is investing in, but I want to buy insurance that covers all of the downside below 5 and a half percent. What would it cost me? If I were to sell to somebody else all of the upside above 5 and a half percent from this portfolio, the two numbers would exactly balance each other out because that's the marketplace for valuing risk,

So the marketplace price for insuring the 5 and a half percent, given how I'm investing, the market would charge me a price for giving up all of the upside 5 and a half percent, one hundred percent of the upside.

valuing the variability of investments.

Q I just want to make sure I understand what you are saying.

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Page 707

ARBITRATION - VOLUME III

So is it your testimony that the market would take all of the upside and charge you a price in addition to that?

A The market would charge me all of the upside, and that would equal what I have to pay for all of the downside protection.

The two absent frictional costs, brokerage commissions, things like that, the buy/sell spreads, the two would cancel each other out assuming the 5 and a half were the correct marketplace interest rate.

Q And 5 and a half marketplace interest rate for?

A PBGC is indicating that that's the marketplace interest rate for these liabilities at that date.

Q What about a 7 and a half percent assumption?

A If I wanted to buy insurance against everything below 7 and a half and give up everything above 7 and a half, I would give up everything above 7 and a half. And I would have to pay incrementally out of my pocket the difference between the present

Page 708

Page 709

ARBITRATION - VOLUME III value of the cash flow stream at 7 and a half and the cash flow stream at 5 and a half.

All of that difference in present value would be the price I would have to pay in addition to the upside above 7 and a half to insure everything below 5 and a half.

I'm sorry. Back up.

To insure everything below 7 and a half, I would have to give up all the upside plus pay for the difference between 5 and a half and 7 and a half. That's what would it cost me to insure the 7 and a half.

So I would have to pay, give up all the upside and pay money to guarantee the 7 and a half. So I couldn't buy 7 and a half in the marketplace with no cost.

Q What is a Bader Swap?

A Bader Swap was popularized in literature by Larry Bader, a well-known actuary who spent nine years at Salomon Brothers under Marty Leibowitz, under Henry Kaufman writing research papers.

Marty Leibowitz went over

ARBITRATION - VOLUME III to Tiaa-CREF, and Henry Kaufman was the one who called the market switch in 1982.

If I offered to give you a -- if I offer you a 20-year deal, I will give you one hundred percent of return on the S&P 500 on a million dollars.

In return, you are going to give me one hundred percent of return on one month's Treasuries for 20 years on a million dollars.

But, remember, on the S&P that I'm paying you, the market goes down, you gotta pay me.

So you are getting the full return on the S&P 500, good or bad, for 20 years.

The expectation is, let's for argument sake the S&P's expected to earn 8 percent over the next 20 years. And one month Treasuries, for argument's sake, are not going to be low like they are now but will be 3 percent for the next 20 years.

And, further, to make sure this is a good transaction, we each have humongous banks behind us guaranteeing that we'll make

Page 710 Page 711 1 ARBITRATION - VOLUME III 1 ARBITRATION - VOLUME III 2 2 Why? If I'm going to give you the S&P 500, good on our commitments so it's not a 3 3 I'll buy a million dollars' worth of promise that won't be kept. 4 4 So your expectation is you're going S&P 500. Whatever returns I give you, you 5 5 to make \$50,000 a year, the difference are going to give me one month's Treasuries. 6 6 between 8 percent and 3 percent, over a I sell one month's Treasuries short 7 7 for a million dollars, and whatever you give 20-year period on this million-dollar 8 8 me I pay the short. Where do I get the investment. 9 9 If I offered to enter into this money to buy the million dollars for the 10 10 S&P? From what I get by selling the transaction with you, what would you offer 11 11 to pay me? Because this transaction is Treasuries short. 12 12 called the Bader Swap. I will give you the So I'm at no cash Day One. I'm 13 13 return on one investment, you'll give me the long S&P, short Treasuries because you are 14 14 return on another investment. And it's a going to pay me to cover the short in the 15 15 Treasuries. I'll pay you to cover the long 20-year deal, we can't get out of it. 16 16 on the S&P. Most people would say, oh, I'm 17 17 Every time that we have to settle going to make \$50,000 expected a year for 18 18 up, whatever you pay me for the Treasuries, the next 20 years, I should pay something 19 19 I give to the short market. Whatever I have for it. Maybe not the million dollars. 20 20 to pay you on the S&P, I collect from the Discount it, maybe some discount for risk 21 21 contract I bought. whatever, but they'll pay me something. 22 22 So I'm just the middleman shuffling The answer is if you are willing to 23 23 money between you and the marketplace. I pay me one dollar, you have overpaid because 24 24 can actually put this on autopilot and walk anything you pay me is pure profit, and I 25 25 away. But whatever you paid me Day One, I can guarantee that contract at zero cost. Page 713 Page 712 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 I would like you to take a look -put in my pocket, I walk away, pure profit. 3 3 The expected return on the S&P is A Interest rate or the investments? 4 4 I'm looking at -- if you look at 500 basis point greater than the expected 5 5 return on the one-month Treasuries. the end of the financials, and it's -- it's 6 6 right after Page 24. It says Schedule MB, Yet ab initio, from Day One, the 7 7 Line 11, "Justification for change in two have the same value because I can just 8 8 swap them. actuarial assumptions." 9 9 After 20 years, ex-ante, you can Do you see that? 10 10 say, well, based on expected return, you Yes. Α 11 11 should have done better. But you had risk And looking at that, can you tell O 12 12 where there are years S&P doesn't do as us what -- for that year what the interest 13 13 rate was used to calculate withdrawal well, and they can be very long periods of 14 time. From the years 1962 to 1982, the Dow 14 liability? 15 15 Jones Industrial Average, before dividends, A Yes. 16 16 And what was that? went up 16 percent, less than one percent a O 17 17 Six percent. The interest rate year. Bond prices did much better. 18 18 used to value vested liability for purposes Q Thank you. 19 19 Let's go to Exhibit 12. of withdrawal liability determination was

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changed to 6 percent.

Q And can you take a look at the

was the interest assumption used for

investment returns for that same year?

Form 5500, the Schedule MB, and tell us what

A On Schedule MB, Line 6D, "Valuation

20

21

22

23

24

25

This is a 2012 Form 5500.

And you see this is for the

A Yes, it is. Consolidated

Retirement Plan, Line 1A.

the front page.

Consolidated Retirement Plan if you look on

1			
	Page 714		Page 715
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	liability"	2	the liability percentage-wise for every
3	MR. RICHMAN: Could you hang on	3	1 percent change in the discounting rate.
4	a second. See if we can get	4	I also looked at the Segal numbers,
5	everybody there.	5	at the two different discount rates used in
6	A Next page, Line 6D, as in "David."	6	the withdrawal liability, which were the
7	"Valuation liability interest rate, 7 and a	7	7 and a half percent and the PBGC rates
8	half percent preretirement, 7 and a half	8	which effectively were between 5.4 and
9	percent post retirement."	9	5.5 percent, most of the liabilities at
10	Q Okay.	10	5 and a half.
11	Do you know what the effective	11	Only those payments that exceed
12	interest rate that results from the use of	12	beyond 20 years are being discounted at 5.2
13	the Segal blended method for calculating	13	but only for the period of 20 years. The
14	The New York Times' withdrawal liability?	14	first 20 years of every payment is at 5 and
15	A I cannot calculate it exactly	15	a half percent.
16	because I don't have the data and because I	16	So the effective interest rate for
17	haven't built the entire valuation software.	17	the PBGC interest rate calculation was
18	I was able to estimate it by	18	somewhere in the 5.4s. Looking at the 7 and
19	looking at various documents and using	19	a half and looking at the differences, I
20	various actuarial rules of thumb and	20	would say that the net effective rate the
21	estimation procedures.	21	single interest rate that would give the
22	I looked at the liability based at	22	liability used for withdrawal liability was
23	7 and a half percent, and then I looked at	23	close to 6 and a half percent.
24	the current liability based at another	24	Q Okay. And let's take a look at
25	interest rate and determined the effect on	25	Exhibit 71.
	Page 716		Page 717
1		1	
1	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
2	ARBITRATION - VOLUME III A Seventy-one. Red?	2	ARBITRATION - VOLUME III MR. RICHMAN: I'm good with
2	ARBITRATION - VOLUME III A Seventy-one. Red? ARBITRATOR IRVINGS: You're	2	ARBITRATION - VOLUME III MR. RICHMAN: I'm good with that.
2 3 4	ARBITRATION - VOLUME III A Seventy-one. Red? ARBITRATOR IRVINGS: You're right. Red.	2 3 4	ARBITRATION - VOLUME III MR. RICHMAN: I'm good with that. MR. MILLER: I figured you
2 3 4 5	ARBITRATION - VOLUME III A Seventy-one. Red? ARBITRATOR IRVINGS: You're right. Red. THE WITNESS: Which Bates	2 3 4 5	ARBITRATION - VOLUME III MR. RICHMAN: I'm good with that. MR. MILLER: I figured you would be.
2 3 4 5 6	ARBITRATION - VOLUME III A Seventy-one. Red? ARBITRATOR IRVINGS: You're right. Red. THE WITNESS: Which Bates number?	2 3 4 5 6	ARBITRATION - VOLUME III MR. RICHMAN: I'm good with that. MR. MILLER: I figured you would be. BY MR. RICHMAN:
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Page 718 Page 719 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 Can you tell us what the Mercer --Mercer Portfolio Return Calculator, the 3 3 The Mercer Portfolio Return Α assumptions that would have been used by an 4 4 Calculator. actuary at Mercer at that time. 5 5 Can you tell us what that is? The assumptions are updated roughly 6 6 When ASOP 27 that we looked at, the quarterly. 7 earlier version came out, the Pension And to put in 47 percent equities, 8 8 Practice Council put out a practice note 47 percent mixed bonds and 6 percent real 9 9 advising actuaries, helping them deal with estate to assume 20 basis points of 10 10 investment-related expenses, commissions, the ASOP. 11 11 At that time, I was the chief buy/sell, trust fees, things like that that 12 12 actuary of Mercer and I had one of our reduce an investment return on a portfolio, 13 13 investment consultants with some analysts and to run it. 14 14 put together a tool. It may have been And the results were a 50th 15 Excel-based, but it got investment formulas 15 percentile of 6.75 percent, approximately, 16 16 using expected returns, geometric or and 7 and a half percent was at about the 17 17 arithmetic means, standard deviations and 65th to 70th percentile. 18 18 correlations to take various asset mixes and MR. MILLER: Mr. Arbitrator, 19 19 determine the percentiles that we discussed I'm going to object at this point in 20 20 earlier. time. And it is my opinion that 21 21 based on Dr. Kra's deposition And what I did was I called one of 22 22 my colleagues who is at Mercer, my successor testimony, what he just testified to 23 23 who is the chief actuary of the US as to the results from application of 24 24 retirement business. And I asked him to this Mercer Portfolio Calculator were 25 pull up the second calendar quarter 2009 25 results that he conducted after his Page 720 Page 721 1 ARBITRATION - VOLUME III 1 ARBITRATION - VOLUME III 2 2 expert for The New York Times in deposition and after his expert 3 3 report. terms of his talking about the return 4 4 And I specifically asked him at his as 7 and a half being the number that 5 5 deposition whether his expert report the actuary chose and, therefore, it 6 6 contained all of the opinions that he was was accurate. And I think it is 7 7 going to testify to at this hearing and eminently reasonable to have 8 8 whether he was going to give any Mr. Kra -- and it was done, by the 9 9 additional opinions. way, after his report and his 10 10 And we can find the deposition deposition -- to testify about what 11 11 testimony, but Dr. Kra testified at that the rate would be. 12 12 time that his expert report contained all MR. MILLER: I would point out 13 13 of his opinions. that I believe Mr. French said he did 14 14 If, in fact, the application of not calculate a range in connection 15 this Mercer Portfolio Calculator, which 15 with his expert report. 16 16 he's just testified to, was undertaken But as Mr. Richman just confirmed, 17 17 after his deposition, I would move that all of this was done not merely after 18 18 this testimony be struck because we did deposition and after filing of the expert 19 19 not have the opportunity to ask him about report and in conflict with his 20 20 it at his deposition. And we're deposition testimony, but apparently it 21 21 prejudiced by that. was done just within the last two weeks 22 22 This is, I believe, a post expert subsequent to Mr. French's expert 23 23 report and post deposition calculation. testimony in this case. And it is

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thereby inherently prejudicial.

MR. RICHMAN: Well, he did,

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MR. RICHMAN: This is a

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ARBITRATION - VOLUME III Mr. Kra did testify Dr. Kra did testify at his deposition with respect to what he thought the rate would be. And we are just bringing it up right now. ARBITRATOR IRVINGS: Well, is the issue here the testimony about the overall his calculation about a single effective rate would be 6.5 or that the 7.5, using the Mercer calculation, would be approximately MR. RICHMAN: Well, his deposition testimony here's the deposition testimony, and if you want to read along, it's on Page 167 of Dr. Kra's testimony. The question: "Fair point. In that regard, did you do a calculation to convert the liability result that Segal obtained to a single discount rate? "I don't have the data for which to 24 ARBITRATION - VOLUME III ARBITRATION - VOLUME III I'm challenging. ARBITRATOR IRVINGS: Ron, if I might. What I'm understanding, they are not challenging his testimony about the 6.5 percent as a single effective rate. They're simply challenging the use of the Mercer scale to place the 7.5 percent. And I'm not sure what that information does for me anyhow. MR. RICHMAN: Okay. If it doesn't do anything for you, then I'm not going to press it. MR. MILLER: Yeah, and we'll move that it be stricken. MR. RICHMAN: That issue about the Mercer. ARBITRATOR IRVINGS: The Mer be stricken. MR. RICHMAN: Okay. BY MR. RICHMAN: Okay.
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MR. MILLER: That's not what 25 6 and a half percent is a reasonable or was
WIK. WILLER. That's not what
Page 724 Page 7
¹ ARBITRATION - VOLUME III ¹ ARBITRATION - VOLUME III
² a reasonable investment assumption for the ² strike Mr. French's testimony
Fund at this hearing. 3 completely because he did not opine
Pages 173 to Pages 175 of the rough on the ultimate question here.
5 transcript. 5 ARBITRATOR IRVINGS: I'm sui
6 And in your opinion, can Mr. French 6 I'll be getting motions and
opine on whether the Fund's assumptions for responses.
8 calculating withdrawal liability are 8 MR. MILLER: You'll be getting
9 reasonable in the aggregate if he doesn't 9 responses to said motions.
9 reasonable in the aggregate if he doesn't 10 have an opinion as to whether the 6 and a 9 responses to said motions. 10 BY MR. RICHMAN:
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Page 726 Page 727 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 don't recover for quite some time, and as a increase." 3 3 result you have to contribute more money to So now instead of every active 4 4 the pension plan to amortize those losses, participant covering all of the liabilities 5 5 and gains and losses with respect to that if you have very few people, that would 6 6 require a humongous contribution increase. person plus one and a quarter retirees, that 7 7 It increases the risk to the plan to the active person had to cover themselves plus 8 8 point where the plan could no longer perhaps over two retirees or vested returns. 9 9 either increase contributions adequately and And that means there were 10 10 the plan could go bankrupt. substantially more risk, and the plan really 11 11 So as the number of contributing -has to take note of that. 12 12 participants for whom contributions are O Okav. 13 13 being made shrinks, the risk to the plan If you were the enrolled actuary 14 14 increases. And as a result, at some point calculating the withdrawal liability for 15 trustees would have to derisk in some 15 The New York Times, what interest assumption 16 16 respects. would you have used? 17 17 And, in fact, I think I even had a A I would have used a bond-type 18 comment about that in my report. 18 interest rate for all of the liabilities. 19 19 You did. If I were using the PBGC interest rates for 20 On Page 12 of my report, 20 all of the liabilities, the effective rate 21 Paragraph 42, "As of May 31, 2008, there 21 would have been somewhere about 5.4, 22 were 1.28 nonactives," meaning retirees of 22 something in that range. 23 vested returns -- "per active. As of 23 It would have been a relatively 24 May 31, 2010, only two years later, that 24 risk-free rate. It might have -- depending 25 ratio skyrocketed to 2.11, a 65 percent 25 on the plan, I might have used PBGC. I Page 728 Page 729 1 1 ARBITRATION - VOLUME III ARBITRATION - VOLUME III 2 2 might have used Treasuries. I would have to (Pause.) 3 3 look at the duration of liabilities, the ARBITRATOR IRVINGS: Are you 4 4 nature. But it would have been something in available the next day of -- the 5 5 the 4s or 5s for the interest rate. 26th? 6 6 MR. RICHMAN: I have no further MR. MILLER: I'm on the West 7 Coast Monday, Tuesday, Wednesday that auestions. 8 8 ARBITRATOR IRVINGS: Okay. Let week at an arbitration. At best, I 9 9 me ask you this. Let's try and can come back on the red eye, so I 10 10 introduce some level of reality here. would not want to do it first thing 11 11 I hate to say, you know, this is as in the morning. 12 12 we say in Boston, it's a shocka (ph.) If you have another witness to do 13 13 that it's here and 20 of 4. 14 Realistically, how long do you 14 MR. RICHMAN: Yeah, we can go 15 think cross examination is going to take? 15 to Urbank. We have to finish Urbank. 16 16 MR. MILLER: Realistically, at And then we can get in -- finish 17 17 least an hour and a half if not two Urbank and Lewis and Barbara. 18 18 hours ARBITRATOR IRVINGS: That would 19 19 ARBITRATOR IRVINGS: There we be decided -- are you going to go one 20 go. So it doesn't make any sense for 20 day or two days? 21 21 me to start this now. Is your mediation in New York? 22 22 MR. MILLER: I understand. MR. RICHMAN: Is it someplace 23 23 ARBITRATOR IRVINGS: We can go good? 24 24 off the record. MR. MILLER: Boston.

ARBITRATOR IRVINGS: So we can

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We're done for the day.

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Page 730	Page 731
¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
start at 9:00 on the 26th.	tell us it's not relevant and we'll tell
3 MR. RICHMAN: Right.	you why it is relevant.
4 ARBITRATOR IRVINGS: Where are	4 MR. MILLER: It's beyond that.
5 we in Urbank's testimony?	5 Mr. Arbitrator, if you recall, you
6 MR. MILLER: I think we are	6 had indicated prehearing conflicts that
7 pretty close to done.	to the extent that you wanted us to bring
8 We have about an hour or so, say an	8 in representatives of other contributing
9 hour and a half to complete cross and	employers, we needed to identify who they
¹⁰ redirect.	were and make offers the conclusion of
What do you think?	the second day of the hearing if there is
12 ARBITRATOR IRVINGS: Okay. So	a predicate issue.
then who else do you have?	MR. RICHMAN: Well, we can also
MR. RICHMAN: We're going to	bring in Mr. Costello who is on our
have to deal with that issue on	list who is a fund administrator, but
16 Monday.	16 I think it's a ridiculous waste of
We also have an issue with respect	1 time.
to if it's decided we don't need to bring	18 The collective bargaining
in other contributing employers or	agreements of other contributing
representatives of contributing	20 employers
employers, but we have collective	MR. MILLER: Which I don't
bargaining agreements that have been	think are relevant.
objected to on relevance grounds.	MR. RICHMAN: So we'll argue
24 And my suggestion would be we each	24 about relevance.
25 argue relevance in the brief, and you'll	25 The collective bargaining
argue relevance in the orier, and you in	The concerve barganning
Page 732	Page 733
¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
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¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
bargaining agreements come in and	expand this hearing in a dramatic
everybody argue about why the language	³ fashion. And the time for making that
4 that certain language is different and	4 position
5 that's relevant or the language is the	5 ARBITRATOR IRVINGS: The
same as the relevant language; that's the	⁶ evidence we looked at the letters,
⁷ point here.	⁷ for example, breakdown
8 MR. MILLER: And our view is	8 for competitors' relationships, isn't
9 the documents do not speak for	9 it arguably in your interest to see
themselves.	what the language says?
Indeed, the reason we're having	MR. MILLER: Well, most of the
this hearing is to try to ascertain what	bargaining agreements that are on the
the meaning of The New York Times	objections that Mr. Richman wants to
relevant bargaining agreement language	$\frac{14}{12}$ have come in are not related to those
was. We need to know what the process	withdrawal liability assessments.
was for making contributions that these	They're from other contributing
other employers may have engaged in, we	employers. And we will make
need to have testimony from other	arguments in our briefs about the
employers about their understanding.	assessments and the relevance and
It is a dramatic expansion at this	weight you should give to those
late date and I think at great prejudice	assessments as a consequence of not
to The Times to either let the documents	maving the appropriate testimony.
in without that context going in	ARBITRATION IN VIVOS. The these
directly. And to the extent that that	concerive ourgaining agreements and
context would be developed, it would	employers about whom I have no other
Page 736	Page 737
¹ ARBITRATION - VOLUME III	¹ ARBITRATION - VOLUME III
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	Page 738		Page 739
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2	hour and a half to complete cross and	2	employers, we needed to identify who they
3	redirect.	3	were and by the second day of the hearing
4	What do you think?	4	if there is a predicate issue.
5	ARBITRATOR IRVINGS: Okay. Who	5	MR. RICHMAN: Well, we can also
6	else do you have?	6	bring in Mr. Costello who is on our
7	MR. RICHMAN: We're going to	7	list who is a fund administrator, but
8	have to deal with that issue on	8	I think it's a ridiculous waste of
9	Monday.	9	time.
10	We also have an issue with respect	10	The collective bargaining
11	to if it's decided we don't need to bring	11	agreements of other contributing
12	in other contributing employers or	12	employers
13	representatives of contributing	13	MR. MILLER: Which I don't
14	employers, but we have collective	14	think are relevant.
15	bargaining agreements that have been	15	MR. RICHMAN: So we'll argue
16	objected to on relevance grounds.	16	about relevance.
17	And my suggestion would be we each	17	The collective bargaining
18	argue relevance in the brief and you'll	18	agreements all have the same language.
19	tell us it's not relevant and we'll tell	19	MR. MILLER: No, they don't.
20	you why it is relevant.	20	MR. RICHMAN: Well,
21	MR. MILLER: It's beyond that.	21	MR. MILLER: They don't.
22	Mr. Arbitrator, if you recall, you	22	MR. RICHMAN: The key language
23	had indicated prehearing conflicts that	23	is all the same.
24	to the extent that you wanted us to bring	24	MR. MILLER: And we certainly
25	in representatives of other contributing	25	don't know the procedures by which
	Page 740	1	
	1 4 9 5 7 1 5		Page 741
1		1	_
1 2	ARBITRATION - VOLUME III	1 2	ARBITRATION - VOLUME III
			-
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III other employers made their contributions and the relevant statements that they made from those other employers that they understood the operative language to be and I just quickly blurted out "no, those collective bargaining agreements are not all the same." So it just opens up an enormous can of worms. And the reality is that if Ron had wanted to have testimony from other contributing employers, there was an opportunity earlier in this case to identify who he wants his potential witnesses to be and we could have deposed them and addressed that here, but the time for that has passed. And as it relates to the relevance question, we believe that certainly the documents MR. RICHMAN: Excuse me	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME III MR. RICHMAN: Look, the answer is pretty simple. The documents will speak for themselves. There's not an issue about whether they're authentic or not. Part of what The Times has been saying is, oh, okay, so you did all these calculations for withdrawal liability for all these other folks but that wasn't for The New York Times. And to the extent and the arbitrator will get to see the language to the extent the language is the same in the relevant portions that deals with that issue. It is there is no prejudice to anybody to have these collective bargaining agreements come in and everybody argue about why the language that certain language is different and that's relevant or the language is the same as the relevant language; that's the point here.

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1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	themselves.	2	MR. MILLER: Well, most of the
3	Indeed, the reason we're having	3	bargaining agreements that are on the
4	this hearing is to try to ascertain what	4	objections that Mr. Richman wants to
5	the meaning of the New York Times	5	have come in are not related to those
6	relevant bargaining agreement language	6	withdrawal liability assessments.
7	was. We need to know what the process	7	They're from other contributing
8	was for making contributions that these	8	employers. And we will make
9	other employers engaged in, we need to	9	arguments in our briefs about the
10	have testimony from other employers about	10	assessments and the relevance and
11	their understanding.	11 12	weight you should give to those
12 13	It is a dramatic expansion at this	13	assessments as a consequence of not
14	late date and I think at great prejudice	14	having the appropriate testimony.
15	to the Times to either let the documents	15	ARBITRATOR IRVINGS: Are these
16	in without that context going to the	16	collective bargaining agreements and
17	director. And to the extent that that	17	employers about whom I have no other evidence?
18	context would be developed, it would	18	MR. RICHMAN: There are some.
19	expand this hearing in a dramatic fashion. And the time for making that	19	And there are those that are for the
20		20	
21	position ARBITRATOR IRVINGS: For	21	contributing employers for whom there is evidence.
22		22	ARBITRATOR IRVINGS: Let me say
23	example, breakdown for competitors' relationships, isn't it arguably in	23	this: I would take the collective
24	your interest to see what the	24	bargaining agreement exhibits and
25	language says?	25	employers about which the
	language says!		employers about which the
	Page 744		Page 745
1	ARBITRATION - VOLUME III	1	ARBITRATION - VOLUME III
2	calculations were done, but I'm not	2	INDEX
3	going to expand it for ones I don't	3	PAGE
4	have any other evidence on.	4	WITNESS DOSANIA ECANI
			WITNESS: ROSANA EGAN
5		5	Continued Direct Examination by Mr. Miller 505
5 6	MR. RICHMAN: Okay.	6	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman 505 625
		6 7	Continued Direct Examination by Mr. Miller 505
6	MR. RICHMAN: Okay. MR. MILLER: That's fine.	6 7 8	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 625 Redirect Examination by Mr. Miller
6 7	MR. RICHMAN: Okay.	6 7 8 9	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 625 WITNESS: ETHAN EMANUEL KRA
6 7 8	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 625 Redirect Examination by Mr. Miller
6 7 8 9	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9 10	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 625 WITNESS: ETHAN EMANUEL KRA
6 7 8 9 10 11	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9 10 11 12	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 625 WITNESS: ETHAN EMANUEL KRA
6 7 8 9 10 11	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9 10 11 12	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 625 WITNESS: ETHAN EMANUEL KRA Direct Examination by Mr. Richman 674
6 7 8 9 10 11	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9 10 11 12	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 659 WITNESS: ETHAN EMANUEL KRA Direct Examination by Mr. Richman 674 EXHIBITS Exhibit 118 Memorandum dated March 29, 614
6 7 8 9 10 11 12 13	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9 10 11 12 13 14	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 625 WITNESS: ETHAN EMANUEL KRA Direct Examination by Mr. Richman 674 EXHIBITS
6 7 8 9 10 11 12 13 14	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9 10 11 12 13	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 659 WITNESS: ETHAN EMANUEL KRA Direct Examination by Mr. Richman 674 EXHIBITS Exhibit 118 Memorandum dated March 29, 614
6 7 8 9 10 11 12 13 14 15	MR. RICHMAN: Okay. MR. MILLER: That's fine. (Whereupon, the proceedings were	6 7 8 9 10 11 12 13 14 15	Continued Direct Examination by Mr. Miller Cross Examination by Mr. Richman Redirect Examination by Mr. Miller 659 WITNESS: ETHAN EMANUEL KRA Direct Examination by Mr. Richman 674 EXHIBITS Exhibit 118 Memorandum dated March 29, 614
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1	ARBITRATION - VOLUME III	
2	CERTIFICATE	
3	STATE OF NEW YORK)	
	: SS.	
4	COUNTY OF NEW YORK)	
5	I, BARBARA R. ZELTMAN, Shorthand	
6	Reporter and Notary Public, within and	
7	for the State of New York, do hereby	
8	certify:	
9	That this transcript is a true	
10	record of the proceedings had.	
11	I further certify that I am not	
12	related to any of the parties to this	
13	action by blood or marriage, and that I	
14	am in no way interested in the outcome of	
15	this matter.	
16 17	IN WITNESS WHEREOF, I have hereunto	
18	set my hand this 6th day of March, 2015.	
19		
-		
20	BARBARA R. ZELTMAN	
	Court Reporter and Notary Public	
21	Court reporter and rotary I done	
22		
23		
24		
25		
		1

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1	ARBITRATION - VOLUME IV
2	AMERICAN ARBITRATION ASSOCIATION
	X
3	THE NEW YORK TIMES COMPANY,
4	Petitioner,
5	
	V.
6	
	NEWSPAPER and MAIL DELIVERERS'-PUBLISHERS'
7	PENSION FUND,
8	Claimant.
	X
9	
10	
11	ARBITRATION
12	VOLUME IV
13	New York, New York
14	March 26, 2015
15	
16	
17	
18	
19	REPORTED BY: BARBARA R. ZELTMAN
20	Professional Stenographic Reporter
21	
22	
23	
24	Job Number: 90463
25	

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¹ ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
3	2 APPEARANCES:
March 26, 2015 9:28 a.m. Arbitration proceedings held at American Arbitration Association, 120 Broadway, New York, New York, before BARBARA R. ZELTMAN, a Professional Stenographic Reporter and Notary Public within and for the State of New York.	ARBITRATOR: MARK IRVINGS, ESQ. 24 Elba Street Brookline, Massachusetts 02446 JONES DAY Attorneys for Petitioner 51 Louisiana Avenue, N.W. Washington, D.C. 20001 BY: EVAN MILLER, ESQ., MIGUEL EATON, ESQ., and YAAKOV ROTH, ESQ. SCHULTE ROTH & ZABEL LLP Attorneys for the Claimant 919 Third Avenue New York, New York 10022 BY: RONALD RICHMAN, ESQ., MAX GARFIELD, ESQ., and ADAM GARTNER, ESQ.
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ARBITRATION - VOLUME IV (Whereupon, the following proceedings were had:) MR. MILLER: I want to begin today's hearing by making a statement and a motion as a result of The Times finally receiving certain trustee minutes over the weekend. In our recent briefing respecting Rosana Egan's testimony, The Times expressed a concern that it was likely that the minutes supportive of The Times' position in this case had not previously been produced. And what we have now learned is that this concern is quite warranted. There are a number of separate set of minutes that are very supportive of The Times' position. And supportive of The Times' position, Mr. Arbitrator, on both of the issues in this case, the contract issue and the Segal blend issue. And not only would we have put these documents in evidence, quoted from them in our opening brief, but more	ARBITRATION - VOLUME IV importantly, we would have deposed a number of witnesses about these documents including potentially witnesses who have not testified. And we would then have used these documents in eliciting their hearing testimony. And all of these relevant documents were responsive to our prior discovery requests and should have been produced back in the fall and prior to the deposition schedule. Here's what we've also learned. We also learned that there are a number of additional documents that clearly exist. And the Fund has custody of specifically exhibits to the trustee minutes and trustee meeting agenda memos that are also potentially relevant and potentially helpful to The New York Times, and they have not yet been produced. And, finally, we learned from the meeting minutes that we do have that there were other special meetings of the trustees for which the Fund has not

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ARBITRATION - VOLUME IV Improvement Plan.

ARBITRATION - VOLUME IV produced minutes as well as other possible meetings involving trustees that didn't rise to the level of a formal or special meeting.

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And we need to have a thorough search done for these special meeting minutes and an opportunity to depose people about special meetings and other meetings and potentially have them testify

I thought it would be helpful in demonstrating how probative these meeting minutes that we did receive are and helpful to The Times in its case if I went quickly through two examples. And I have a binder of the meeting minutes.

The first one I want to go through is under Tab 21, which are the minutes of a special meeting of April 18, 2011.

Mr. Arbitrator, if you look at the first page of that set of meeting minutes under the discussion of Funding Improvement Plan, and as you know there have been testimony about the Funding

Under the first paragraph under that heading, there's reference to a Segal report that was discussed at this trustee meeting, and a copy of the Segal report is appended to these meeting minutes as Exhibit A. And we have not yet received that Exhibit A Segal report nor have we received any of the exhibits that were indeed attached to any of these sets of meeting minutes.

The more probative element of this set of meeting minutes is on the second page. And it would be useful I think if you turn to that page and focus on the bottom paragraph. There is a paragraph that begins "The Segal representatives and review ..."

And so this purports to be a discussion at this meeting by Segal of potential contributions that would be necessary in developing a Funding Improvement Plan.

And toward the bottom of that

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ARBITRATION - VOLUME IV

paragraph, there is a sentence that begins "Under the scenario ..." And it says, "Under the scenario that took into account the adoption of this special funding relief measures, the default schedule would increase the employer contribution rate at the time of collective bargaining from 8 percent to 12.4 percent."

And later on it also makes mention of employer contribution rate, not rates, plural. And it refers to the rate as a percentage.

That's our theory. I mean, our theory is that the contribution rate under the bargaining agreement is expressed as a percentage. And if the contribution rate is expressed as a percentage and CBUs are necessarily because they have to be expressed in dollars and wages.

So this is a very probative document and very helpful to The Times' case, and as trustees meeting minutes it

ARBITRATION - VOLUME IV ties the trustees to the concept of a contribution rate as a percentage.

And because we didn't have this document until this past weekend, we couldn't use it to support Terry Hayes' testimony on what constituted CBUs and what he learned at trustee meetings.

And we couldn't use it in the depositions of Rosana Egan and John Urbank on the issue of CBUs, and we couldn't use it in refuting Rosana Egan's testimony when she testified.

And, indeed, I think this documentary evidence does directly contradict her testimony that those people at the Fund always understood that the contribution rate was a percentage of the shift wage.

This document refutes that and we couldn't use it

We also couldn't use it to refresh the trustees' recollection of what happened at trustee meetings regarding what the contribution was.

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ARBITRATION - VOLUME IV

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The second of the two examples I would like to show you is at Tab 25.

Those are meeting minutes almost two years later in February of 2013, February 27, 2013, and you'll see under the first paragraph it says "Call to order." And, again, there is a mention of a Segal handout on funding plan projections, again attached and made part of the minutes of Exhibit A.

And as I said, we haven't receive any of those exhibits.

And if you turn to the third page, you'll see toward the bottom of the page, again there is a discussion of the Funding Improvement Plan and different objectives in order to develop it.

And under the Paragraphs 1, 2 and 3 there's reference to changing the contribution rate from 8 percent of what, of wages, to 11.8 percent of wages.

And, in fact, without belaboring it, this document on more than ten different occasions within the document

ARBITRATION - VOLUME IV refers to the contribution as a percentage of wages.

And, again, it ties use of the phrase "percent of wages" to the trustees since these were their minutes.

And my point here is not that there are arguments to be made about the implication of this, but that we didn't have a chance to use it in depositions and then at the hearing both, as I say, for our witnesses as well as in cross.

And you should be aware that the meeting minutes also speak of the 7.5 percent return and projections of 7.5 percent return for this particular portfolio for a number of years. And that the trustees at times also in the last several years started out changing the investment allocation mix and decided not to do that.

That's also helpful for The Times. It's also consistent with our views on the Segal blend. We couldn't use it to refute Rosana Egan on the Segal blend.

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ARBITRATION - VOLUME IV

So these are very helpful minutes that we had a right to and we have not been able to use thus far in the case.

There are additional documents that we glean as a consequence of these minutes that we know are in the possession of the Fund that we have not received

I made mention of special meetings. In these minutes they make mention of some special meetings, and we don't have minutes of all of the special meetings.

And there are at least four separate special meetings referred to in the minutes we do have that we have not yet received minutes in connection with.

And if the Fund doesn't have them in the Fund office, perhaps their agents did, their counsel, former trustees. We need to see these documents. We have a right to these documents.

So we think we've been highly prejudiced by this failure to get these documents. And we think that these

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ARBITRATION - VOLUME IV

documents were clearly responsive to our production requests that we made back in the summer.

So at this juncture, we think we cannot eliminate the prejudice, but for the reasons that I discussed and the importance of these documents, we should not be required to just press ahead.

So, instead, as a consequence of all this, The Times would like to and hereby does make the following motion to hopefully at least mitigate the prejudice.

So, first, we would move for an order requiring the Fund, Mr. Arbitrator, to produce all of the exhibits to the minutes that we have received, the agenda memos. I made mention that there were apparently written agenda memos that were provided at each of the trustee minutes. We'd like all of the agenda memos that were prepared for each trustee meeting and all other documents referred to in the minutes.

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ARBITRATION - VOLUME IV

2.4

And we'd like the order to require the Fund to inquire of all of its agents for minutes relating to special meetings that we have not yet received or other meetings involving trustees where minutes or notes were kept.

Second, following receipt of these documents -- and we don't think it would take that long to pull them together, 10 days, 14 days, tops -- we'd like an order allowing us a three- to four-week period to depose or redepose witnesses. We don't want to have to confront these witnesses with documents at a hearing without have a sense of what would be said about them.

To be sure, the depositions will be limited to questions regarding trustee minutes and trustee minutes only and the exhibits and the other documents that we would be provided.

And, third, following sort of the close of this mini additional deposition period, we would like the opportunity to

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ARBITRATION - VOLUME IV then identify the witnesses we'd like to put back on the stand, like a Terry Hayes or Rosana Egan or additional witnesses, potentially trustees, other trustees.

And then we'd schedule additional hearing days, and that would also include Ms. Albergo, presumably in May or perhaps June after this short period to take depositions.

And, fourth and finally, we'd like the order to require the Fund to pay The Times' costs and fees for this additional discovery and hearing testimony.

And in that final regard and as to this last request, we would like the opportunity to brief the issues so that we can provide to you, Mr. Arbitrator, what we think would be useful precedent to demonstrate that under that fact scenario we have here there is clear support and a good foundation for the imposition on the Fund of causing them to pay The Times' costs and fees for this

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ARBITRATION - VOLUME IV additional discovery.

Now, I recognize that there's some irony in this because this request would extend the proceedings further. And as you know, we at the time said historically, in trying to move in the other direction, to wrap this up. That irony hasn't been lost on me or my client.

And to be sure with this delay The Times is going to have to continue to make the ongoing withdrawal liability payments, and that's prejudicial.

But we think in light of the wrongful practices here and in order to have a full and complete record and to mitigate our prejudice that has and would continue to result from a failure to have this opportunity to properly prepare for and use these responsive documents, this is the fairest way to proceed. And that we should not have to pay for these extra efforts caused by the very, very late arrival of what our relevant and helpful

ARBITRATION - VOLUME IV document and documents that should have been produced are.

ARBITRATOR IRVINGS: Just so I understand before you respond.

What is your request regarding today?

MR. MILLER: So obviously we thought about that. So we have three witnesses scheduled for today. The order was Mr. Urbank and then Dr. Kra, my cross of Dr. Kra, and then Mr. Lewis from Weiser. Let's take the easy case.

I don't think there's any reason we should hold up the cross-examination of Dr. Kra, to be sure. And as I said, there's some meeting minutes that is supportive of our theory of the Segal blend. I would like to reserve the opportunity, although I don't think we'll use it, to have him come back, but I think we should proceed.

It makes sense to proceed with Dr. Kra. He's really independent of this

2.4

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ARBITRATION - VOLUME IV additional request.

2.4

With Mr. Lewis, our view was that assuming he's here and we're all here, while we would reserve the right to recall him, we're ready to proceed to examine him. We'll put aside an examination of him respecting a trustee minutes of meetings obviously he was at until we've got the whole package of relevant documents so we don't do it piecemeal. But we think it makes sense to nonetheless proceed with him.

Mr. Urbank was the toughest of the three as it relates to what we're requesting. And we think on bounds that, notwithstanding his being here, that so many of these documents are related to his testimony. Indeed, you may recall, Mr. Arbitrator, he's the one who often takes the minutes of the meetings and does the initial draft of minutes.

So I think as to him, all things being equal, it would be prejudicial to The Times and kind of half-hearted to Page 765

ARBITRATION - VOLUME IV have a cross-examination of him now, knowing that for certainty we'd want to both redepose him on certain documents, so we can prepare in advance what he would have to say as it relates to

testimony, and then hearing testimony.
 So that's how we align the witnesses.

ARBITRATOR IRVINGS: Okay. MR. RICHMAN: I'm just going to make some initial comments. Obviously, this is an extraordinary surprise to us.

My first reaction, I think the best analogy here, this is a desperate cry for help from a drowning person and nothing more.

This idea that there is extraordinary evidence in the meeting minutes is ridiculous.

We have had a lot of evidence, both people testifying as well as a plethora of documents, that have talked about contribution rate, the difference between

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ARBITRATION - VOLUME IV contribution rate and contribution base unit.

Ms. Egan, Mr. Urbank both testified about that.

There are lots of other documents already admitted into evidence that talk about consideration rate, and to say that, whoa, all the sudden we have found the Holy Grail is ridiculous.

That's not any new evidence. It's not even evidence at all.

Now, Mr. Miller has given us two examples when he opened his -- I was going to say plea, but -- presentation. He was talking about what appeared to be many more than two examples.

We, obviously, would like the opportunity to know what these examples are and to address them, because other than the two that have been pointed out, we don't know about them.

We think that we produced documents appropriately. It is absolutely the case, given the tumult at the Fund with

ARBITRATION - VOLUME IV respect to the termination of the in-house folks and the changes of trustees that one can easily see from year to year. And the changes in lawyers, it's been difficult to collect documents.

But we've done everything appropriately with respect to producing documents. We actually offered in our response to The Times' last motion that all of the minutes be put into evidence. And we're happy to go back and ask again for anything that appears to be missing. We do know that there are missing minutes, as you know, that we have wrote to you earlier this week.

With respect to the other requests for relief, I think it's not a surprise given my response or given the request that they are completely and totally out of bounds. We're happy to respond to them in writing if, Mr. Arbitrator, you think that's even necessary. We're certainly hoping that it isn't necessary

Page 768 Page 769 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 unfounded, but if, Mr. Arbitrator, you because they're, quite frankly, off the 3 3 wall think that we need to respond, we 4 4 obviously will respond. And -- but we are certainly willing 5 5 to take all the minutes, put them into In terms of today's events, you 6 6 evidence. That was our proposal. That's know, without having a written motion and 7 7 really some real argument about why this fine 8 8 is startling new evidence, I do think we If The Times has good reason to 9 9 should go forward with all three of the take other depositions after looking at 10 10 this -- after pointing to this new witnesses. And, you know, obviously 11 11 evidence, in quotes, you know, that is that's not going to be my call, right. 12 12 fine. But contrary to The Times' And I got that. 13 13 approach, if we're going to open up a I will say that we are told 14 14 Dr. Kra -- oh, he's here. whole discussion about evidence, it's 15 15 already in evidence. It's not The Times MR. MILLER: He's here. 16 16 that should be compensated here, it is MR. RICHMAN: He is here. 17 17 ARBITRATOR IRVINGS: But that the Fund. 18 18 And so we have ourselves a little was going to be a powerful argument. 19 19 bit of a mess here. And my suggestion MR. RICHMAN: I didn't know 20 would be that The Times put it in writing 20 what time he was coming. 21 21 ARBITRATOR IRVINGS: I so we can respond to a motion. 22 22 I would like the opportunity to, understand. 23 23 quite frankly, not have to respond and MR. RICHMAN: So he's here, 24 24 not spend the Fund's resources to respond he's got a pretty difficult schedule, 25 25 to a motion that I think is credibly let's go ahead and deal with him in Page 770 Page 771 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 terms of a cross and recross, if difference between contribution rate and 3 3 CBUs has been well highlighted, what has necessary. 4 Mr. Lewis is waiting to receive a 4 now been pointed out, at least the 5 5 call from us to let him know what the examples, would represent things that was 6 6 schedule might be. We are happy to have discoverable. 7 him testify today. And, quite frankly, And you are entitled to make an 8 8 we think Mr. Urbank ought to testify too, assessment as to whether you want to do. 9 9 but again that's your call. A, get certainly the exhibits, the 10 10 documents you want. I would like a MR. MILLER: May I respond? 11 ARBITRATOR IRVINGS: No. 11 listing of what it is. 12 12 MR. MILLER: Okay. MR. MILLER: Yes. 13 13 ARBITRATOR IRVINGS: Without ARBITRATOR IRVINGS: And if 14 14 attributing blame, culpability and there are other points in the minutes 15 15 the rest, my approach obviously that you feel trigger requests for 16 16 throughout this whole proceeding documents, highlight those to me and 17 17 while handling a plethora of motions to Ron. 18 18 is that my role is to get in evidence Clearly Dr. Kra, there's no reason 19 19 as much as is relevant, necessary and not to take him. Largely, he wasn't part 20 20 expeditiously as possible. I of the meetings. 21 21 consider that my obligation. MR. MILLER: We agree. 22 I'm concerned about some of the 22 ARBITRATOR IRVINGS: Mr. Urbank, 23 23 things in the minutes -- again, without I think it's not appropriate to take 24 24 him until you get the additional attributing culpability or the rest. 25 25 Clearly, while the issue of the stuff, at least. At the very least,

Page 773 Page 772 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 one of the examples related ARBITRATOR IRVINGS: Meaning? 3 3 specifically to his reports and his MR. RICHMAN: Meaning, 4 work and his discussions at the 4 Mr. Urbank testified, so we haven't 5 5 meetings. talked to him since he's testified 6 6 here because he's in the middle of The other gentleman, Mr. Lewis, the 7 7 auditor, do you feel you can -his testimony. 8 8 MR. MILLER: Yes. As I ARBITRATOR IRVINGS: Right. 9 9 MR. RICHMAN: And so if we are indicated, we can certainly start and 10 10 we think it would be useful given now going to go back and do 11 11 that everybody is here to have an discovery, and Mr. Urbank may get 12 12 initial examination of him, but we deposed, that we want the opportunity 13 13 would reserve the right as a to talk to him about the new things 14 14 consequence of the documents we have that he is going to be deposed by, if 15 15 and will be receiving to recall him. he is deposed and he is going to 16 16 ARBITRATOR IRVINGS: You testify about, if he's going to 17 17 certainly reserve the right to testify. And the same for Mr. Lewis. 18 18 request to recall him. MR. MILLER: I think Ron's 19 19 MR. MILLER: Right. request is fair as it relates to a 20 MR. RICHMAN: And if he is 20 deposition. And we would like to 21 21 going to be recalled, and certainly depose him before we put him back on 22 22 Urbank, it sounds like will be the stand, because we're trying to 23 23 recalled, we think that the freeze sort of replicate where we would have 2.4 24 ought to melt. The witness freeze otherwise been if we had these 25 25 ought to melt -documents. Page 774 Page 775 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 And so I do think, first, we do particularized request as to the 3 3 want to depose him as well as put him additional categories of documents that 4 4 back on the stand. we want. 5 5 And as a consequence of our wanting We would identify as it relates to 6 6 to depose him, I do think it would be the meeting minutes that we do have other 7 7 unfair if he were prohibited from being instances in which we think that a 8 8 prepped for that deposition. particular document is relevant. 9 9 ARBITRATOR IRVINGS: Okay. I think we would probably want to 10 10 hold off on who we want to depose until Thank you. Great. We'll do that 11 11 then. You'll be able to speak with Mr. Richman has provided the additional 12 12 documents. We would then promptly Mr. Urbank. 13 13 indicate to Ron who we want to depose. MR. RICHMAN: Okav. 14 14 And what about Mr. Lewis? And then following those depositions, we 15 15 ARBITRATOR IRVINGS: If he's would identify who we'd want to put on 16 16 going to be deposed, yes, you'll be the stand. 17 17 able to speak to him, too. ARBITRATOR IRVINGS: Let me 18 18 MR. RICHMAN: Okay. mention this. You mentioned, for 19 19 ARBITRATOR IRVINGS: Okay. example, agenda memos or whatever. 20 20 MR. MILLER: So, MR. MILLER: Memos. 21 21 Mr. Arbitrator, based on what you ARBITRATOR IRVINGS: Is it 22 said, let me make this 22 necessary for you to get the agenda 23 23 recommendation. memos for every meeting even where 24 24 Perhaps by Monday, if not earlier, from the minutes there's nothing 25 25 we would provide to you and Ron both a that --

	Page 776		Page 777
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	MR. MILLER: I think so because	2	MR. MILLER: No. He became a
3	the minutes are they are not	3	trustee I believe in '07.
4	necessarily thorough.	4	MR. RICHMAN: '07, that's
5	It may well be the case that, for	5	pretty close to the
6	example, an agenda	6	ARBITRATOR IRVINGS: That's
7	ARBITRATOR IRVINGS: It's okay.	7	pretty close.
8	I'm willing to err on the side of	8	MR. MILLER: Most of the
9	completeness. I don't know what it	9	people.
10	means in terms of	10	ARBITRATOR IRVINGS: Most of
11	MR. RICHMAN: We don't even	11	the people.
12	know what they are.	12	Does he have, so far as you know, a
13	THE COURT: Okay.	13	complete set of minutes and agenda items?
14	And you can give them an annotated	14	MR. MILLER: We have
15	request explaining what they are. Give	15	not reviewed those minutes because
16	them like a treasure map.	16	they are not
17	MR. MILLER: Okay.	17	ARBITRATOR IRVINGS: I guess my
18	MR. RICHMAN: The fact it may	18	first question being, could we ask
19	appear in the reference to the	19	him does he think he has all
20	minutes	20	MR. MILLER: We did ask, and he
21	ARBITRATOR IRVINGS: I	21	says he does not believe he has a
22	understand. Let me ask another	22	full set of minutes.
23	question, a practical question.	23	MR. RICHMAN: Well, he
24	Terry Hayes was a trustee during	24	testified that he had the minutes
25	this entire period?	25	that we took him from, he had the
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1 2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV
	ARBITRATION - VOLUME IV meeting materials, that he took them		ARBITRATION - VOLUME IV privileged information, why wouldn't
2	ARBITRATION - VOLUME IV meeting materials, that he took them home not home, to his office, and	2	ARBITRATION - VOLUME IV privileged information, why wouldn't we be able to get those minutes?
2	ARBITRATION - VOLUME IV meeting materials, that he took them home not home, to his office, and that he had them in his office and	2	ARBITRATION - VOLUME IV privileged information, why wouldn't we be able to get those minutes? Those notes. Notes.
2 3 4	ARBITRATION - VOLUME IV meeting materials, that he took them home not home, to his office, and that he had them in his office and they never left his office.	2 3 4	ARBITRATION - VOLUME IV privileged information, why wouldn't we be able to get those minutes? Those notes. Notes. ARBITRATOR IRVINGS: Those
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		1	
	Page 780		Page 781
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	there are other, for example, minutes of	2	that there's a difference between
3	special meetings that you guys can't find	3	them just receiving his notes.
4	and he has, maybe the answer is to copy	4	If he has some notes, we're happy
5	them, send them to Ron, make his	5	to he can produce them.
6	redactions and then you can filter them	6	MR. MILLER: Notes should be
7	to me.	7	produced. Not just notes, though,
8	MR. RICHMAN: Copy without	8	from Mr. Hayes. To the extent other
9	reviewing.	9	trustees have notes that they took at
10	ARBITRATOR IRVINGS: Yeah.	10	these meetings, it would be useful
11	Terry Hayes can copy them.	11	and consistent with your overarching
12	MR. RICHMAN: Right.	12	objective that the both parties have
13	MR. MILLER: The point is it	13	notes.
14	goes to you first, make the call	14	ARBITRATOR IRVINGS: So to the
15	about what might be privileged and	15	extent the notes exist that don't
16	give us the nonprivileged, and then	16	relate to privileged information
17	we'll decide.	17	MR. RICHMAN: Well, the answer
18	Now, the issue of notes is entirely	18	is, you need to follow the same
19	separate, right. This is an issue the	19	setup, right? Copy those notes, send
20	same as any other trustee. If they have	20	them to us.
21	notes from the meetings	21	ARBITRATOR IRVINGS: Right.
22	MR. RICHMAN: He can produce	22	That's fine.
23	them but not just give them to them.	23	MR. RICHMAN: And we will
24	ARBITRATOR IRVINGS: Right.	24	redact
25	MR. RICHMAN: In other words,	25	ARBITRATOR IRVINGS: That's
	,		
	Page 782		Page 783
1	_	1	ARBITRATION - VOLUME IV
2	ARBITRATION - VOLUME IV	2	understanding.
3	fine. And then send both sets to me,	3	ARBITRATOR IRVINGS: Well, this
4	a complete set and a redacted set.	"	
	MD MILLED. And not just	4	
	MR. MILLER: And not just	4 5	was a frolicking detour.
5	Hayes, but my point was other	5	was a frolicking detour. You want to call Dr. Kra back?
5	Hayes, but my point was other trustees.		was a frolicking detour. You want to call Dr. Kra back? MR. RICHMAN: Can we break for
5 6 7	Hayes, but my point was other trustees. MR. RICHMAN: Happy to do that.	5 6 7	was a frolicking detour. You want to call Dr. Kra back? MR. RICHMAN: Can we break for five minutes?
5 6 7 8	Hayes, but my point was other trustees. MR. RICHMAN: Happy to do that. MR. MILLER: And former	5 6 7 8	was a frolicking detour. You want to call Dr. Kra back? MR. RICHMAN: Can we break for five minutes? MR. MILLER: Certainly.
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1 ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
² pension funds.	² "calculations," I mean withdrawal liability
During the time when you were	3 calculations.
serving as an enrolled actuary for	4 A I don't recall.
5 multiemployer funds, do you recall whether	5 Q Would it be more than five?
6 they had occasion to assess withdrawal	6 A I don't recall.
7 liability?	7 Q Do you recall what the time frame
8 A I had at least one fund that did	8 was during the period in which you did
9 withdrawal liability. There may have been	9 perform calculations of withdrawal
others. I just would have to go through the	10 liability?
list.	11 A Thinking through, the UFCW
Q And the one fund that you do recall	Local 1262 Food Fund had withdrawals, but I
that assessed withdrawal liability during	believe that the calculations were prepared
your ten years as an enrolled actuary, what	by one of my colleagues and not by myself.
was what fund?	The Nonfood Fund had a mass
A The UFCW Local 1262 Nonfood I'm	withdrawal. We had withdrawal liability
sorry, no, the Food Pension Fund.	assumptions and methods clearly outlined. I
And also we did withdrawal	don't recall if we had any prior to the mass
	don't reed in we had any prior to the mass
natinity on the ronnood rension rand which	withdrawar actuarry withdrawing.
was unough a mass withdrawar.	Q Bo as you sit here today, can you
	recall any instance in which you calculated
natifices, roughly now many calculations	a withdrawar habinity for a withdrawing
would you say that you have performed on	employer of a mattemployer pension plan
behalf of multiemployer pension funds for which you were the enrolled actuary? And by	outside of a mass withdrawar:
which you were the enrolled actuary? And by	25 A I can't recall.
Page 786	Page 787
Page 786 ARBITRATION - VOLUME IV	Page 787 ARBITRATION - VOLUME IV
_	
¹ ARBITRATION - VOLUME IV	1 ARBITRATION - VOLUME IV
 ARBITRATION - VOLUME IV ARBITRATOR IRVINGS: Sorry. 	ARBITRATION - VOLUME IV enough.
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Page 788 Page 789 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 as opposed to ongoing funding. Okay. involved? In that regard, are you aware of 3 3 A I don't give blanket statements 4 4 any pension fund that uses the Segal blend covering everything possible in the world. 5 5 approach for ongoing or minimum funding I mean, there are always outlier, crazy 6 6 situations. purposes? 7 7 Ā No. As an actuary before opining on 8 8 anything, I look at the situation, evaluate OSo in connection with use of the 9 9 the facts and determine whether something is Segal blend approach respecting valuing 10 10 unfunded vested benefits for withdrawal appropriate. 11 11 liability purposes, do you believe that the There are differences as to whether 12 12 Segal blend approach is a sound approach all benefits are due to be paid within 13 13 from the standpoint of applicable actuarial six months so no benefits would be paid for 14 14 the next 30 years and it's a delivered principles? 15 15 Under actuarial standards of Α liability many years out. There are so many 16 16 practice, I believe the Segal blended different scenarios that are possible, I 17 17 approach would comport and comply with just can't give a for-all answer. 18 18 O Let's talk about PBGC interest actuarial standards of practice and with the 19 19 rates. Would you characterize the interest statute. 20 Is it the approach I would select? 20 rates that are published by the PBGC as a 21 21 No. Does it comport with the rules? I type of risk-free or near risk-free rate? 22 22 The PBGC rates are designed to be believe it does. 23 23 Do you believe it comports with the relatively market-based risk-free rates. 2.4 rules in all events or situationally 24 I'm not going to say they're one hundred 25 25 percent risk free because there are depending on the particular pension fund Page 790 Page 791 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 differences between Treasuries, corporate rates are and, based on those quotes or 3 3 bonds, triple As, double As, default risk, rates and certain mortality tables, develop 4 4 but the PBGC rates I believe are designed to what the interest rate would be or, 5 5 be a proxy for a relatively risk-free alternatively, maybe even given the interest 6 discounting system or structure. 6 rate directly. 7 7 Q So for the purposes of this I would have to look at their 8 8 examination and to move it along, would it published materials because their 9 9 be fair to say that the PBGC rates are a methodology may have evolved over time. So 10 near risk-free rate? 10 if you have something specific I could look 11 11 A near risk-free rate. I'm not at, I'd be glad to comment on it. 12 going to say they're the only possible 12 Q Am I correct that insurance 13 choice, but they are one of a number of 13 companies develop their annuity quotes in 14 possible near risk-free rates that an 14 part based on expected returns of portfolios 15 15 actuary can select. of high-grade corporate bonds? 16 What is your understanding of how 16 They generally will look at the 17 PBGC rates are derived? 17 corporate bond yield curve, the bonds in the 18 A My understanding is -- and I would 18 marketplace, the cash flows that are 19 have to look at their materials because 19 expected under the annuity stream of pension 20 their methodologies may have changed over 20 stream and try to determine a matching 21 the years. But at certain points in time 21 portfolio to immunize themselves against the 22 they have surveyed insurance companies and 22 changes in interest rates over time.

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obtained annuity quotes, or they have used

determine what annuity quotes are or annuity

their contacts in the pension industry to

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defaults, things like that.

They may have to adjust for things

like calls and put options in bonds or

Page 793 Page 792 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 bonds but they may also include money market Q Would it, therefore, be fair to say 3 3 instruments that would have lower expected that PBGC rates approximate the expected 4 4 return on a portfolio of high-grade returns. 5 5 corporate bonds? O And I take it that you don't know 6 6 A They are close to. I'm not going what the suballocations were of the Pension 7 7 to say they match, but they are Fund in this case as it relates to their 8 8 approximately in the range of what a fixed income bond portfolio? 9 9 high-grade bond portfolio of a matching cash A I don't have specifics on the 10 10 flow would yield. grades of bonds of event. 11 11 Q And do you know what percentage of If we look at the 5500 filing, it 12 12 the portfolio of assets owned by the Pension probably would have noted in it the duration 13 13 of the bond portfolio. And, generally, most Fund in this case is invested in high-grade 14 14 corporate bonds? of these funds would have a duration that is 15 15 Α As of the withdrawal date of shorter than the duration of the liabilities 16 16 May 2009, I believe that 47 percent of the and thus would have a lower return than what 17 17 portfolio was invested in fixed income would be needed to immunize the cash flows 18 18 securities of the pension obligations. 19 19 O And fixed income securities, of But that's generally speculative on 20 course, could include high-grade corporate 20 your part? You haven't done the analysis. 21 21 We have the 5500s here; we could bonds but they could also include other 22 22 bonds that are not of a high-grade ranking, easily look at it. 23 23 But you haven't done that analysis? correct? O 24 Generally, they would include 24 A I haven't done that analysis. A 25 high-grade bonds. They might include other 25 Does the Pension Fund in this case O Page 794 Page 795 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 primarily own high-grade corporate bonds? That, let's say, you had a bond 3 3 A I have not analyzed the specific portfolio that was going to earn 5 percent 4 4 bond holdings of this Fund. over a period of the payout stream of these 5 5 Q Do you know whether the Pension benefits but you were worried about 6 6 Fund in this case primarily owns risk-free adverse -- let's say you were, if you used, 7 or near risk-free assets? 7 let's say, 4 percent because you were afraid 8 8 I have not analyzed the specific that people might outlive the mortality 9 9 holdings other than to note that this Fund tables and you wanted conservatism, or you 10 10 was 47 percent of fixed income securities as use 6 percent because you said, well, we're 11 of the withdrawal date. 11 rolling the dice and we might do better. 12 12 Q Do you know if the Pension Fund in So that would be a bias, in my 13 13 this case plans to shift or alter its view, as to which way you are valuing the 14 14 investment allocation and increase its liabilities, higher or lower. 15 percentage of risk-free or near risk-free 15 So to continue with your example, 16 16 assets in the future? if a bond portfolio was otherwise 17 17 I have not spoken with any of the objectively projected to earn 5 percent, 18 18 and the actuary estimated the return to be trustees or anyone from the investment 19 19 advisers of the Fund and I have no knowledge either less than 5 or more than 5 because of 20 20 of their long-term plans. other circumstances, in that case the 21 21 O Are you familiar with the term actuary would be engaging in actuarial bias, 22 "actuarial bias"? 22 correct? 23 23 I've heard that term. Not necessarily because there may 24 24 What is your understanding of the be justifications for the difference, such 25 25 term "actuarial bias"? as if the actuary were using the Neanderthal

Page 796 Page 797 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 Mortality Table where everybody is dving 2 stream. 3 3 quickly, then you'll justify using a In the example you gave, that's a O 4 2 percent interest rate to offset the bias 4 durational look, correct? 5 5 in the mortality table; or if, on the other It's looking at -- well, duration 6 6 hand, they were using the Superman Mortality is an approximation because yield curves 7 7 Table, then it would justify using a could be concave or convex and you could 8 8 7 percent interest rate. have the same duration -- two portfolios 9 9 Q But if one assumes all things are could have the same duration yet a different 10 10 otherwise equal in terms of other return. 11 11 assumptions, if a bond portfolio is Because, let's say, you had a bond 12 otherwise projected to earn 5 percent and an 12 portfolio that had ten-year bonds and 13 13 actuary values it at less than or more, the one-year bonds, and you had another bond 14 14 actuary would be engaging in a form of bias. portfolio with all five-and-a-half-year A No. I disagree with the statement 15 15 bonds, they might both have -- or duration, 16 16 as phrased because you are saying the ten duration ones, the others are all 17 17 portfolio. duration five and a half. They might have 18 18 I would say the bias initiates from the same average duration, yet they would 19 19 have different returns because of the looking at the liability stream and looking 20 at the bonds that would match that liability 20 convexity and concavity of the yield curve. 21 stream, not the actual bonds in the 21 MR. MILLER: I'm going to avoid 22 22 portfolio. following up on that, and instead I'm 23 23 So I don't look at the bonds that going to ask a more simple question. 24 24 are actually held by the fund. I look at If an actuary were to engage in 25 the bonds that would match the liability 25 bias, that would necessarily need to -- that Page 798 Page 799 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 bias would necessarily need to be in I would like you now to assume that 3 3 connection with the actuary's making a a multiemployer pension plan is invested 4 4 future prediction of an event, correct? primarily in risk-based assets. 5 5 Well, the bias would represent And based on that assumption, do 6 6 either a conservatism or a lack of you believe that a risk-free rate or near 7 7 conservatism in the projection. risk-free rate would be an unbiased 8 8 Very often you'll see an insurance prediction of the anticipated rate of return 9 9 company for life insurance will have a bias for such a pension plan? 10 10 assuming people die sooner just to make sure The risk-free or near risk-free 11 11 that the life insurance policies have enough rate would represent a risk adjusted 12 12 in case a plane came along. projection of the return on that portfolio. 13 13 But my question was really more But that's not quite the question I O 14 14 simple than that: That bias, when asked. 15 15 undertaken by an actuary, necessarily needs I asked you the question of, as it 16 16 to be in connection with the actuary's relates to actuarial bias. If you assume 17 17 prediction or projection of a future event? that a pension plan primarily owns 18 18 A Or it could be a bias in the risk-based assets, do you believe that use 19 19 measurement of the current situation. of the risk-free rate is and would be an 20 20 You have assets that may not have unbiased prediction of the anticipated rate 21 21 readily tradeable market values, illiquid of return for that pool of pension plans? 22 assets, partnerships. Then there could be a 22 I believe that it would be an 23 23 bias in the valuation of those assets, which unbiased valuation of the liabilities, which

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is not a future event, it's a current event.

Q I see.

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is what you use that return for.

I want you to focus a little bit

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ARBITRATION - VOLUME IV more on the particulars of the question.

Assume you've got a pension plan that primarily owns risk-based assets and an actuary is predicting the anticipated rate of return for that pension plan pool of assets.

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If that pension plan pool of assets is primarily invested in risk-based investments, is the use of a risk-free rate or near risk-free rate an unbiased prediction of the anticipated rate of return?

Anticipated rate of return will be A a relatively bell-shaped curve.

And if you are evaluating the 50th percentile, the 50th percentile will be higher than the risk-free rate.

However, if you are looking at it in terms of value to the holder, valuing it at the risk-free rate would reduce it to the market price.

O Now I want to switch for a moment from the concept of the actuary bias to the concept of best estimates, because in your

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ARBITRATION - VOLUME IV direct testimony you were questioned by Mr. Richman about the concept of best estimate and best estimate range.

Do you remember that testimony?

I believe -- I don't remember the details of my testimony, but I would recognize that those concepts could have been asked. I have not seen the transcript from a few weeks ago.

Okay.

Assume, again, that a multiemployer pension plan is invested primarily in risk-based assets.

Do you believe that use of a risk-free rate or near risk-free rate would represent the actuary's best estimate of the anticipated rate of return for this pension plan's asset pool?

The question is if you are looking at the returns on the asset pool or the ability of the asset pool to cover the liabilities of a liability stream --

And let me stop you --

-- and the ASOPs make it very clear A

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ARBITRATION - VOLUME IV that in picking the best estimate or the best estimate range for a particular situation, you have to look at the purpose of the measure that is explicit in the ASOP.

So absent the purpose of the measure for which the answer may be different depending on purpose of measure, I can't answer the question.

Okay. So I'm going to unpack that answer a little bit and ask you a particular question as it relates to a particular portion of it.

If the actuary's task is in fact to look at and to predict the anticipated returns on that asset pool and that is the task, do you believe that the risk-free rate or near risk-free rate would represent the best estimate of the anticipated rate of return for that asset pool, if the asset pool was invested primarily in risk-based --

The actuary would end up with a spectrum of returns with probabilities under ASOP 27. The best estimate is a range between generally the 25th and 75th

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ARBITRATION - VOLUME IV percentiles as the ASOP was constituted at the time of this particular measure.

And so if you were looking at solely expected return on assets for purposes of projecting the assets, you would have a range of the 25th to 75th percentiles on the return of those assets. And that is what the ASOP says.

I know but that's not the question I wanted you to answer.

I wanted you to answer a simple question.

If you have a -- if a pension plan has a pool of assets and they are primarily invested in equities, would the risk-free or near risk-free rate represent the best estimate of the anticipated future return for that pool of assets?

A future return on a future pool of assets would be a range of returns depending on -- it is a probability of different returns. You could calculate the 50th percentile, the mean or the median that will differ from the risk-free rate.

Page 804 Page 805 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 However, the best estimate is a I heard a pause, so I answered the 3 3 range which covers a range of returns, and question when I heard the pause. I thought 4 the risk-free rate may very well be within 4 there was a question mark. 5 5 that range. I'll try to phrase the question and 6 6 state the question without taking a pause or Q Or the mean or median rate of 7 7 return would be distinct from the risk-free a breath. 8 8 rate or near risk-free rate? Do you believe that the risk-free 9 9 That mean or median return would rate should be used to value a pension 10 10 equal the risk-free rate plus a risk premium plan's unfunded vested benefits for 11 11 depending on the riskiness of the portfolio. withdrawal liability purposes regardless of 12 12 The risk premium that is earned the actual assets that the pension fund owns 13 13 over time by those who bear the risk. in its portfolio? 14 14 So that's another way of saying yes Α Yes. 1.5 Would the use of the risk-free or 1.5 to my question? O 16 16 I'm not saying it's yes. You are near risk-free discount rate in such a case 17 17 characterizing it as yes. I'm being very reflect the anticipated investment returns 18 18 on the plan's actual portfolio of assets? explicit --19 19 MR. MILLER: I withdraw it. It would represent a risk adjusted 20 Do you believe that the risk-free 20 expected return on the plan's assets. 21 21 rate should be used to valuate a pension But it would not represent the 22 22 plan's unfunded vested benefits for expected mean or median return on that 23 23 withdrawal liability purposes -plan's portfolio of actual assets, correct? 24 2.4 It would not represent the mean or Α Yes. 25 25 Let me finish the question. median. Q Page 806 Page 807 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 the counterparty that's guaranteeing me the 3 3 Would the use of the risk-free or 5 percent floor everything that I earn up 4 4 near risk-free discount rate in such a case above 5, the 5 to 9 and everything above 5 5 reflect the anticipated experience of that 6 6 plan? And that related to the Bader swap O 7 7 A It would represent the risk that you previously testified to? 8 8 adjusted anticipated experience of the plan. The Bader swap is basic finance. Α 9 9 And what do you mean by "risk So let me ask you this question: 10 10 adjusted anticipated experience"? Would you say that the risk-free or near 11 11 A Let's say I own a portfolio, a risk-free rate when used to calculate 12 12 hundred percent of the S&P 500. And withdrawal liability reflects a best 13 13 hypothetically let's assume -- and I'm not estimate of anticipated experience under 14 14 giving investment advice -- that the S&P 500 every multiemployer plan? 15 15 As I said, I can't say every is expected to return 9 percent compounded 16 16 because there's always some outlier annually over the next 20 years. 17 17 And let's furthermore assume that a situation, so I don't want to give an 18 18 risk-free portfolio for that same 20 years unequivocal for all because then maybe we 19 19 horizon would earn 5 percent. can come up with some weird situation. 20 20 If I wanted to guarantee that, even But in general, my view is that the 21 21 though I'm expecting to earn 9, that I would risk-free rate based on the liability stream 22 never get less than 5 over that 20-year 22 of the payments under the fund represents 23 23 period, essentially I would have to give up the best risk adjusted estimate of returns 24 24

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plan.

the 4 percent and all of the upside.

In other words, I would have to pay

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under the plan and experience under the

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ARBITRATION - VOLUME IV

- Q Putting outliers aside, of any multiemployer plan, correct?
 - A Of any multiemployer plan.
- Q And I take it that's because you believe it's appropriate to avoid a transfer of risk from the withdrawing employer to other contributing employers to, in these circumstances, hypothesize for withdrawal liability calculation purposes a different pool of assets that is comprised of risk-free or near risk-free assets, correct?
- A I don't follow the question. There are too many moving parts in that question, so let's break it up.

Q Okay.

So am I right that under your theory, it's appropriate to use a risk-free rate or near risk-free rate to calculate withdrawal liability because there is a prospect -- depending on the rate that's used -- of transferring risk from withdrawing employers to other contributing employers, correct?

A If you use a rate any higher than

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ARBITRATION - VOLUME IV the risk-free rate, the withdrawing employer is transferring risk which has value, negative value, so to speak, to the ongoing employers, and essentially the ongoing employers are subsidizing the withdrawing employer to the extent of the risk transfer.

Q That's my understanding of your opinion.

And so in order to avoid this transfer of risk from the withdrawing employer to the other contributing employers, under your approach, you essentially hypothesize for withdrawal liability calculation purposes a different pool of assets comprised of risk-free or near risk-free assets to determine the discount rate as opposed to the actual plan portfolio, whatever that might be.

A What I would do is I would not look at the actual portfolio. I would look at the liability stream. And "a liability is a liability, is a liability, is a liability to quote that poet about roses (ph.), and say that the liability is

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ARBITRATION - VOLUME IV independent of the opposing assets.

A liability is what it is and the assets are what they are. And one is used to help pay the other, but would almost be to say that if the bank I take my mortgage from, if I borrow money as a home equity loan and I go and invest it in high-risk equities, the bank should mark down the loan as being a lower liability because there's a higher expected return on the cash flow payments.

- Q So your approach in effect is based on the anticipated experience of the plan in connection with not the plan's actual invested assets, but a different pool of assets, risk-free assets. Isn't that right?
- A It's valuing the liabilities based on a portfolio of bonds that would match the liability stream of the benefit payments.
- Q Regardless of the actual assets that the particular pension plan may be invested in, correct?
 - A Correct.
 - Q Let's turn back to the topic of

ARBITRATION - VOLUME IV best estimate and best estimate ranges.

Dr. Kra, I think you testified in your direct examination about a best estimate discount rate for valuing liabilities needing to fall within a best estimate range in order to be consistent with actuarial practice.

Do you remember that?

A Yes.

Q And is it your view that under standard actuarial practice an actuarial best estimate, for example, future investment returns of a portfolio, necessarily refers to an estimated range?

A The actuarial standard of practice that was in effect in May of 2009 described it as a range in which it was more like -- the narrowest range that it was more likely than not. And the actuarial practice at that time was a 50 percent spread in the probability distribution generally viewed as the 25th to 75th percentiles.

Q But, of course, in picking a discount rate for valuing liabilities, one

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ARBITRATION - VOLUME IV has to and as part of that calculation come up with a single number or a single rate for that purpose, right?

A Yes.

Q And is it your testimony that as long as the rate that is chosen falls within the best estimate range, as you believe that shall be defined, such a number would represent the best estimate?

A As the actuarial standard of practice. It's not what I believe, it's what the ASOP said. The ASOP said that it was the narrowest range more likely than not, which the practice at that time was 25th to 75th percentile. It's not my view, it's the standard of practice as applied by actuaries in the United States in 2009.

Q But just to clarify that, this is your view of what general actuarial practice was at the time?

A That's my understanding of it.

I was one of the co-authors of the implementation guide published by the

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ARBITRATION - VOLUME IV American Academy of Actuaries on the very issue.

Q Let me ask you this: How does an actuary go about choosing, in your judgment, particularly during the relevant time here in which this withdrawal liability calculation had to be made, a single number within the best estimate range in order to actually make the liability present value calculation?

A There are a number of factors.

Number one, you have to look at the purpose as ASOP 27 states, you must look at the purpose of the measure. ASOP 27 says there are a number of different approaches that can be taken. ASOP 27 gives a cash flow matching approach which comes up with a near risk-free rate. The bond approach as one approach. It also gives a building-block approach as another alternative approach.

There are a number of approaches that acknowledges that there are multiple approaches that actuaries can take based on

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ARBITRATION - VOLUME IV their best judgment, and it lists a few of them and specifies that the actuary must look at the purpose of the measure in deciding how to do it.

Q It was my understanding based on your earlier testimony that those approaches that you've identified, the building-block approach and the cash flow approach, those were approaches to come up with the range.

I asked you a different question which is how does one go about picking the number within the best estimate range?

A Can we look at the ASOP because I don't believe that's what I -- I didn't say that's how you pick the range. I believe that's also how -- it was helping in getting the number. That's another way of getting the number that many actuaries use the cash flow matching to come up with their number.

O Got it.

And so it's your judgment, just to clarify the record, that use of the building-block approach or use of the cash flow method approach would be approaches

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ARBITRATION - VOLUME IV that are designed not merely to get you to a range, but to get you to a particular rate within a best estimate range?

A I believe that those approaches were used by many actuaries to get a particular rate.

The range would be using some type of stochastic model which would give a probability distribution which would help set the outer bounds for the range; whereas, the cash flow would give you a particular number within a range.

Q In your expert report and I believe in your direct testimony consistent with your expert report, you characterized 3.5 percent to 7 percent as a reasonable range of discount rates for the valuation of unfunded vested benefits in connection with this case for withdrawal liability purposes; is that correct?

A I think we should look at the report. I believe I identified that as the range of interest rates or bond rates that could have been selected at that time

Page 816 Page 817 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 because of different benchmarks that could would be good defense. 3 3 So any number within that range have been observed 4 4 And I'd have to look at the wording would not be unreasonable? 5 5 A I would have difficulty challenging again in my report. 6 anything in that range as being 6 Q No. I think you properly 7 7 characterized your report. And let me unreasonable. 8 8 expand on that a little bit. Seven percent would be a discount 9 9 Am I right that your opinion both rate that is beyond reasonable challenge, in 10 10 in your report and in your testimony was your judgment? 11 11 that at the time the withdrawal liability What I was saying is that if the 12 12 calculation in this case had to be made, the actuary picked anything in that range, I 13 13 range for risk-free to near risk-free rates would have difficulty challenging. It may 14 14 went from as low as 3.5 to 7 percent? not be the one I would have picked within 15 15 Α I believe that's what I said. that range, but I would have difficulty 16 16 And therefore, I assume, you would challenging it as being unreasonable. 17 17 Using actuarial rules of thumb or agree and it is your opinion that any number 18 18 other accepted mathematical methods to within that range of 3.5 percent to 19 19 7 percent would have been a reasonable estimate, can you estimate what the monetary 20 discount rate that the actuary could have 20 difference is for The Times' withdrawal 21 21 liability between using a 7 percent discount used to compute the withdrawal liability in 22 22 this case, right? rate versus a 3.5 percent discount rate to 23 23 value the liability? A How I would rephrase it is that I 24 Without doing the calculation, I 24 would not challenge anything in that range 25 as being unreasonable because I think there 25 would have to get pencil and paper, look at Page 818 Page 819 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 expert report, he did make a calculation of the documents, and could I come up with an 3 3 estimate? Yes. Have I done so? No. Could the difference in The Times' withdrawal 4 4 I give an estimate off the cuff, no. liability between using a 7.5 percent rate O Let me see just for a moment if I 5 5 and roughly this 6.5, maybe a little bit 6 6 could probe that a little bit more. lower rate 7 7 You are familiar with Darren Do you remember that? 8 8 French's expert report in this case, I believe I saw that, yes. 9 9 And do you remember that his correct? 10 10 calculation of the difference between an A I've read it but I have not looked 11 11 application of the 7.5 discount rate and at it in over a month. 12 12 Q Let me see if I can refresh your this roughly 6.5 discount rate was 13 13 approximately and at least I think recollection. 14 14 Do you recall that Mr. French 6.5 million. 15 essentially came up with an effective 15 Do you remember that? 16 16 discount rate for the Segal blend as applied A I'd have to see the report but that 17 17 in this case and that effective rate was doesn't surprise me but I don't remember the 18 18 roughly 6.5 percent? number. 19 19 A If I recall his testimony at O But it doesn't sound unreasonable 20 20 deposition, he had a range and I don't to you? 21 21 recall if it was 6 to 6 and a quarter, 6 and Α 22 a quarter to 6 and a half, or 6, 6 and a 22 In that regard, if \$6.5 million is 23 23 half, I don't recall, but it was within that at least a reasonable approximation of the 24 24 monetary difference in liability between ballpark. 25 25 Here's what I'm getting at. In his using 7.5 and approximately 6.5, isn't it Q

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ARBITRATION - VOLUME IV the case from the standpoint of rule of thumb that the monetary difference for The Times between using 7 percent and 3.5 percent is likely be at least \$12 million?

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Α Yes. Remember that when you are looking at a difference of withdrawal liability, you are looking at leveraged numbers.

So, for example, if the assets of a fund were a hundred million and the change in the discount rate moved the liability from being 101 million to being 105 million. a 4 percent difference, it would be a quintupling of a withdrawal liability.

So when you have leveraging because of the assets, you get a very disproportionate effect on withdrawal liability in the calculation.

So a liability of 105 million versus a liability of 101 million is a 4 percent differential. Yet the difference in withdrawal liability would be 5 million versus 1 million, a 5-to-1 ratio.

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ARBITRATION - VOLUME IV

So looking at the difference in the withdrawal liability or ratio is not really a valid measure because of this leveraging effect.

Let's move to a different subject, the implications of the actuary in this Fund using a 7.5 percent investment return assumption.

Doctor, I want you to assume for purposes of these questions that an actuary's best estimate is that a Pension Fund's actual assets will return on average 7.5 percent annually.

If the actuary nonetheless discounts the unfunded vested benefits for withdrawal liability purposes using the lower rate and the 7.5 percent best estimate return is in fact realized, isn't it true that the withdrawing employer will have overfunded its allocable share of the benefits?

If the Fund was invested within an expected return of 7 and a half percent and there were no risks involved and the Fund

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ARBITRATION - VOLUME IV earned 7 and a half percent, and you valued the liabilities at 6, the withdrawing employer would have paid extra.

On the other hand, if that return came because the risk was borne and it was just serendipitously -- or however the word is -- was achieved, then the ongoing employers bore risk, they took risk, they won the bet.

Q I didn't ask about who was bearing this.

I asked essentially a fairly simple math question.

If the best estimate of future expected returns is 7.5 percent annually and that 7.5 percent best estimate is realized, and the actuary nonetheless discounts unfunded vested benefits for withdrawal purposes using the lower rate, it will be true that the withdrawing employer would have overfunded its allocable share of its benefits; yes or no?

A No. It will have funded its allocable. The ongoing employers then went Page 823

ARBITRATION - VOLUME IV to Atlantic City and gambled with the money and won the bet.

So it's that they took risk with the money they received, they won the bet.

Had they lost the bet, they would have made it up.

So they did not overfund. They paid the right number, the withdrawing employer. It's just that the ongoing employers took risk with that money and won the bet.

However, if you simply focused on actual results over time and then looked back, isn't it true that in retrospect if the Fund returned 7.5 and you determined the liabilities and thus the withdrawal liability payments at less than 7.5, the employer in retrospect, the withdrawing employer in retrospect will be paying more than its allocable share of the benefits?

The withdrawing employer will have paid more than would have been necessary to cover those benefits given the actual return which could have come from even buying the

Page 825 Page 824 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 lottery ticket. So if they bought a lottery They have that ability. A 3 3 ticket and that's how they made their 7 and 0 And if pension trustees wanting 4 4 a half percent, should that have been less investment risk in fact do derisk and 5 5 anticipated when the withdrawal liability change their investment allocations, that 6 6 payment was determined. would certainly affect their discount rate 7 7 ARBITRATOR IRVINGS: You've for funding purposes, correct? 8 8 stated your respective positions on Multiemployer plans generally look 9 this question. Let's move on. 9 at the investment -- actuaries from 10 10 MR. MILLER: Okav. multiemployer pension plans often will look 11 11 BY MR. MILLER: at the investment mix to determine the 12 12 Q We've been talking about investment discount rate that they use for funding 13 13 risk in connection with multiemployer purposes. 14 14 pension plans. And if they -- to the extent that a 15 1.5 If a pension plan's trustees portfolio has a greater portion of fixed 16 16 want less investment risk for their income securities, many actuaries will lower 17 portfolio, they're free to change their 17 the discount rate and increase the funding 18 18 investment allocation and derisk, correct? requirements. I'm not going to say all 19 19 A Trustees have the ability to change actuaries do that but many actuaries do 2.0 investment strategy, to derisk, to de-fees 20 that. 21 (ph.). There are lots of different things 21 And, in fact, the typical practice 22 22 that trustees do. is for funding purposes to use as the 23 2.3 Including, if they wanted, changing discount rate for valuing liabilities the 24 24 their investment allocation to reduce their investment return assumption. And if the 25 risk in the portfolio? 25 investment return assumption is lowered Page 826 Page 827 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 because the investment allocations have been are lockable to those employees, and put 3 3 changed to derisk, then in general, them in -- give them to a particular 4 4 multiemployer pension fund actuaries will investment manager. And they could take all change the discount rate? 5 5 the withdrawal liability payments and give 6 6 A Many of them will change the it to a particular investment manager and 7 7 discount rate. have that investment manager invest matching 8 8 But, to your knowledge, the Pension the liability stream of those employees. 9 9 Fund here has not changed their investment That is something they had the ability to 10 10 allocations either at the time or since the 11 withdrawal liability assessment? 11 Q And, again, you don't know one way 12 A I have not seen anything on what 12 or the other whether the Pension Fund here 13 13 they've done to their investment portfolio has done it? 14 in recent years. 14 I have not seen anything but I 15 15 If a pension plan's trustees wanted could not say they have or have not. I have 16 to avoid bearing any risk that the 16 not seen anything that says they have or 17 withdrawing employer would underfund its 17 haven't. 18 share of unfunded vested benefits, the 18 Q I think that in your direct 19 trustees could segregate the withdrawal 19 testimony you explained that if a 20 liability payments and invest them in 20 multiemployer pension plan's assets turn out 21 risk-free assets, correct? 21 to expect a 7.5 percent investment return 22 They could look at the liabilities 22 but do not achieve that 7.5 percent 23 for the employees of the withdrawing 23 investment return, in the context of a 24 employer, take the assets, a lockable share withdrawal liability, the plan cannot then 24 25 of the assets that they currently have that 25 ex post facto go back to a withdrawing

Page 828 Page 829 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 you wanted to ensure that you would not earn employer and seek more money, correct? 3 3 less than the risk-free rate on that Α I believe so, yes. 4 4 But isn't it also true that if the portfolio, that you would have to give up 5 5 one hundred percent of the upside above the pension plan's assets turn out to return 6 6 more than 7.5 percent, the withdrawing risk-free rate. 7 7 employer does not get a partial refund of Q And that principle is called the 8 8 Bader swap because it was developed by a its withdrawal liability, correct? 9 9 then-actuary named Lawrence Bader? A Correct. 10 10 O I think we mentioned earlier in It was developed by Larry Bader 11 11 based on his experience working for nine this examination and during the course of 12 12 vour direct testimony vou discussed vears at Salomon Brothers and observing Wall 13 13 Street and derivatives and all the something called a Bader swap. 14 14 functions, and he actually showed how you Do you remember that? 15 15 I don't remember how I discussed it could literally demonstrate it in the 16 16 at deposition or at arbitration, but I marketplace. 17 17 discussed Bader swaps. And I gather that it is your view 18 18 that applying that principle here, the idea And am I right to very briefly 19 19 summarize it that it's essentially a theory is that from an ex-ante perspective using 20 of demonstrating the relationship between 20 the risk-free rate to value liabilities 21 21 risk premium and the risk of return below reflects their market value, because if you 22 22 the risk-free rate, right? wanted to avoid any risk of underfunding 23 23 liabilities, the risk-free rate is the most Basically, the Bader swap 2.4 demonstrates that if you had a risk-free 24 vou'd be able to count on, correct? 25 25 That's correct. rate and you took any other portfolio and Α Page 830 Page 831 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 Q So, thus, rather than making a of the risk-free rate to value the unfunded 3 prediction for future plan experience, vested benefits for withdrawal liability 4 application of the risk-free rate to value 4 effectively values them based on their 5 5 unfunded vested benefits for withdrawal ex-ante market value? 6 6 liability purposes is effectively valuing It values them using ex-ante market 7 7 them based on their ex-ante market value, value, and that determines the expected 8 8 return on the fund if it were to be so right? 9 9 MR. RICHMAN: Objection. Can invested and represents what the liabilities 10 10 you go back and tell us experience -could be settled for. And it is a market 11 11 future plan experience about what? valuation of a future stream of benefits and 12 12 what matching investments were produced. MR. MILLER: Let me phrase the 13 13 question again and see if the expert And, in fact, under your approach, 14 14 can answer. If the expert feels he you don't have to make any predictions about 15 future investment returns about the pension 1.5 can answer it. I think that's fine. 16 plan's actual assets, correct? 16 MR. RICHMAN: Well, I don't. 17 17 We look at the what the future ARBITRATOR IRVINGS: Let's see 18 18 if we understand the question. pension plan's assets would produce if they 19 were in a matching bond portfolio. 19 Go ahead. 20 And not looking at the future 20 BY MR. MILLER: 21 21 investment returns for the plan's assets as Q Applying the principles developed 22 22 actually invested, correct? by Larry Bader in the context of withdrawal 23 23 A Does not look at that. liability, am I right that rather than 24 24 making a prediction about the future pension Thank you. 25 And, in fact, under your approach, 25 plan experience of its assets, application

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1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	you don't make any predictions about the	2	MR. MILLER: You objected to
3	anticipated experience under the plan of its	3	it, just to clarify the record.
4	actual assets, correct?	4	MR. RICHMAN: I don't know if
5	A Except to the extent that at the	5	you have a copy of it.
6	time of this withdrawal, subject to ASOP 27	6	MR. MILLER: I'm sorry. It's 3
7	one must be in the best estimate range, we	7	in the list of Objected Exhibits.
8	generally would look also at the	8 9	It's a report of an actuarial task
10	distribution of returns on the actual		force. That's part of the
11	portfolio to determine the 25th and 75th	10 11	legislative history of the
12	percentiles. And that might put bookmarks	12	multiemployer pension plan.
13	on the discount rate.	13	MR. RICHMAN: And I think it's
14	MR. MILLER: I need the list of	14	out of bounds here. It's 1979,
15	the Objected Exhibits because I'm	15	November 1979. And it is before the
16	going to introduce a heretofore	16	law was actually passed. It's
17	Objected Exhibit. BY MR. MILLER:	17	legislative history which is not open
18		18	for forming an opinion of this
19	Q Doctor, I'm going to hand you a list of Objected Exhibits, an Exhibit 3 from	19	actuary. I don't understand the use of this.
20	that list. It's a report of an actuarial	20	Maybe you should tell us what the use of
21	task force.	21	this is.
22	A I'm not going to look at it until	22	MR. MILLER: Fair. This is
23	the lawyer says I can look at it.	23	legislative history. It was
24	MR. RICHMAN: Who objected to	24	submitted this report was
25	this?	25	submitted this report was submitted to Congress in its
	VIII .		buomitted to Congress in its
	Page 834		Page 835
1	Page 834 ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
1 2	ARBITRATION - VOLUME IV deliberation of the Multiemployer	2	ARBITRATION - VOLUME IV construing a particular statutory
	ARBITRATION - VOLUME IV deliberation of the Multiemployer Pension Plan Amendments Act of 1980.	2	ARBITRATION - VOLUME IV
2 3 4	ARBITRATION - VOLUME IV deliberation of the Multiemployer Pension Plan Amendments Act of 1980. And it is legislative history in	2 3 4	ARBITRATION - VOLUME IV construing a particular statutory provision that is, indeed, at issue in the case.
2 3 4 5	ARBITRATION - VOLUME IV deliberation of the Multiemployer Pension Plan Amendments Act of 1980. And it is legislative history in which this actuarial group provided its	2 3 4 5	ARBITRATION - VOLUME IV construing a particular statutory provision that is, indeed, at issue in the case. And, second, in connection with its
2 3 4 5 6	ARBITRATION - VOLUME IV deliberation of the Multiemployer Pension Plan Amendments Act of 1980. And it is legislative history in which this actuarial group provided its opinion on the section of ERISA that	2 3 4 5 6	ARBITRATION - VOLUME IV construing a particular statutory provision that is, indeed, at issue in the case. And, second, in connection with its use for this expert witness, I'd like to
2 3 4 5 6 7	ARBITRATION - VOLUME IV deliberation of the Multiemployer Pension Plan Amendments Act of 1980. And it is legislative history in which this actuarial group provided its opinion on the section of ERISA that relates to the actuarial assumptions that	2 3 4 5 6 7	ARBITRATION - VOLUME IV construing a particular statutory provision that is, indeed, at issue in the case. And, second, in connection with its use for this expert witness, I'd like to confirm whether this expert agrees with
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	Page 836		Page 837
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	been produced, but this belongs in a	2	ARBITRATOR IRVINGS: Okay.
3	brief. It doesn't belong with respect to	3	MR. RICHMAN: Can I take a
4	questioning the opinion of this actuary.	4	moment to read the report?
5	Now, what The Times' counsel can do	5	MR. MILLER: Sure.
6	is create a question based on materials,	6	ARBITRATOR IRVINGS: Do you
7	and based on this material, he can ask	7	want to direct him?
8	the question about do you believe X. And	8	MR. MILLER: Sure. Page 1499
9	then he can argue the legislative history	9	of the report indicates that the
10	in his brief.	10	Academy Task Force was either led by,
11	ARBITRATOR IRVINGS: Well,	11	or certainly a member was Lawrence
12	given the fact he could argue	12	Bader who developed the principle
13	legislative history and based on the	13	that the expert witness is adopting
14	question and what's here, let's save	14	for purposes of this case.
15	the time and you can make reference	15	And on Page 1502, the Academy Task
16	to it and we can get this person's	16	Force advocates to Congress certain
17	opinion on it. And it is a small	17	language and rules be included in
18	piece of the case.	18	connection with how to calculate
19	Let's move on.	19	withdrawal liability.
20	MR. MILLER: Okay.	20	And I want to ask the witness what
21	So I can ask the question?	21	he understands the task force to be
22	ARBITRATOR IRVINGS: You can	22	saying here and whether the
23	ask the question. I haven't admitted	23	recommendation to Congress is consistent
24	it yet.	24	with his views and whether he knows, one
25	MR. MILLER: I understand.	25	way or the other, whether Congress in
			,
	Page 838		
	rage 050		Page 839
1		1	
1 2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV
	ARBITRATION - VOLUME IV adopting 4213 expressly adopted the task	1 2 3	ARBITRATION - VOLUME IV connection with the development of the Bader
2	ARBITRATION - VOLUME IV adopting 4213 expressly adopted the task force's suggestions.	2	ARBITRATION - VOLUME IV connection with the development of the Bader swap?
2	ARBITRATION - VOLUME IV adopting 4213 expressly adopted the task force's suggestions. That's it.	2	ARBITRATION - VOLUME IV connection with the development of the Bader swap? A Yes.
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	Page 840		Page 841
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	Do you see that?	2	Congress decided to increase the withdrawal
3	A Yes.	3	liability.
4	Q Right. And what are the Schedule B	4	Q So just to confirm, Congress did
5	numbers that they're referring to?	5	not adopt the task force's suggestion in
6	A This was issued, if we look at the	6	that regard, did it?
7	date on this document, November 7, 1979, at	7	A Congress
8	a time when valuation interest rates were	8	Q That's a yes or no question.
9	well below PBGC interest rates and so, like	9	A Congress did not explicitly adopt
10	a withdrawal liability using valuation	10	it, but they permitted it within the range
11	assumptions, produced much higher withdrawal	11	of what the actuary would do.
12	liabilities than would have been developed	12	Q But they did not express
13	using PBGC assumptions.	13	MR. RICHMAN: Let him finish
14	And Congress decided to did not	14	his answer.
15	specifically explicitly adopt this	15	A I'm under affirmation to tell the
16	recommendation.	16	whole truth, not partial truths.
17	Had they adopted this	17	Q No. You are under affirmation to
18	recommendation at that time, most withdrawal	18	answer my questions. You will have an
19	liabilities would have been much lower than	19	opportunity to
20	they were under practice as adopted	20	MR. RICHMAN: Let him finish.
21	subsequent to the enactment of MEPPA.	21	Let him finish.
22	So Congress did not adopt because	22	ARBITRATOR IRVINGS: Finish
23	they felt that the Schedule B numbers had an	23	your answer.
24	actuarial basis, if you would have it, to	24 25	A What Congress did is it let the
25	increasing the withdrawal liability, and	23	actuary select an assumption which could be
	Page 842		Page 843
1	Page 842 ARBITRATION - VOLUME IV	1	Page 843 ARBITRATION - VOLUME IV
1 2	ARBITRATION - VOLUME IV the Schedule B or could be the PBGC. It did	2	-
	ARBITRATION - VOLUME IV	2	ARBITRATION - VOLUME IV for buying annuities. Q And the 417(e) rates are typically
2 3 4	ARBITRATION - VOLUME IV the Schedule B or could be the PBGC. It did not explicitly direct the actuary which to do.	2 3 4	ARBITRATION - VOLUME IV for buying annuities. Q And the 417(e) rates are typically tied to corporate bond rates, correct?
2 3 4 5	ARBITRATION - VOLUME IV the Schedule B or could be the PBGC. It did not explicitly direct the actuary which to do. Q That's your legal interpretation?	2 3 4 5	ARBITRATION - VOLUME IV for buying annuities. Q And the 417(e) rates are typically tied to corporate bond rates, correct? A Today they're tied to corporate
2 3 4	ARBITRATION - VOLUME IV the Schedule B or could be the PBGC. It did not explicitly direct the actuary which to do. Q That's your legal interpretation? A That's my actuarial interpretation	2 3 4 5 6	ARBITRATION - VOLUME IV for buying annuities. Q And the 417(e) rates are typically tied to corporate bond rates, correct? A Today they're tied to corporate bond rates. At some times they have in the
2 3 4 5 6 7	ARBITRATION - VOLUME IV the Schedule B or could be the PBGC. It did not explicitly direct the actuary which to do. Q That's your legal interpretation? A That's my actuarial interpretation as an actuary having to implement Title IV	2 3 4 5 6 7	ARBITRATION - VOLUME IV for buying annuities. Q And the 417(e) rates are typically tied to corporate bond rates, correct? A Today they're tied to corporate bond rates. At some times they have in the past been tied to Treasuries.
2 3 4 5 6 7 8	ARBITRATION - VOLUME IV the Schedule B or could be the PBGC. It did not explicitly direct the actuary which to do. Q That's your legal interpretation? A That's my actuarial interpretation as an actuary having to implement Title IV and having been examined by the Joint Board	2 3 4 5 6 7 8	ARBITRATION - VOLUME IV for buying annuities. Q And the 417(e) rates are typically tied to corporate bond rates, correct? A Today they're tied to corporate bond rates. At some times they have in the past been tied to Treasuries. Q And both corporate bond rates and
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME IV the Schedule B or could be the PBGC. It did not explicitly direct the actuary which to do. Q That's your legal interpretation? A That's my actuarial interpretation as an actuary having to implement Title IV and having been examined by the Joint Board for the Enrollment of Actuaries on Title IV ERISA. Q In connection with single-employer plans, am I right that Congress did expressly instruct that PBGC assumptions be used to value vested benefits when a single-employer plan settles its liability, correct? A Not when it settles it, but when a plan is valued for purposes of turning it over to the PBGC in a distressed termination. When a plan is settled outside the context of a distressed termination, Internal Revenue Code, Section 417(e),	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME IV for buying annuities. Q And the 417(e) rates are typically tied to corporate bond rates, correct? A Today they're tied to corporate bond rates. At some times they have in the past been tied to Treasuries. Q And both corporate bond rates and Treasuries are forms of risk-free rates, correct? A Yes. MR. MILLER: We're done with this line of questioning on this document. So will it be admitted? ARBITRATOR IRVINGS: It's not an actual exhibit. MR. MILLER: That's correct. It's not it doesn't necessarily need to be in the factual record of this case. It's legislative history and you can determine the value of it. ARBITRATOR IRVINGS: Right. I

Page 844 Page 845 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 THE WITNESS: Should I close up with the 7.5 percent. 3 3 Q Let's assume for purposes of the this book up? 4 MR. MILLER: Yes. 4 next question that the 7.5 percent rate was 5 5 BY MR. MILLER: in fact developed by the actuary here using 6 Q And, in fact, let me ask you this. the building-block method. 7 7 I do have about 20 minutes left. Assuming that to be the case, would 8 8 Doctor, your testimony discussed it be proper to use the distinct cash flow the so-called cash flow matching method to 9 matching method to develop a different 9 develop an investment return assumption or 10 10 discount rate solely for withdrawal 11 discount rate both in the course of this 11 liability purposes? 12 12 examination and the examination with MR. RICHMAN: Objection as to 13 13 the use of the term "proper." Mr. Richman. 14 14 MR. MILLER: Actuarially Do you remember discussing the so-called cash flow matching method? 15 1.5 proper. A I remember the cash flow method. I 16 16 ARBITRATOR IRVINGS: Okay. 17 don't remember all the things that we 17 Thank you. 18 18 discussed. A Number one, I cannot accept as a 19 19 Q Okay. Do you believe that the given that they used the building-block 20 Pension Fund here or, more particularly, its 20 approach because when I observed the 21 actuaries used the cash flow matching method 21 information from the different 5500s, the 22 22 to develop the 7.5 percent rate that they asset mix in different year ends was 23 23 used for funding valuation purposes? different. And if they truly used the 24 24 There's nothing in the reports that building-block approach, they would have had 2.5 I was provided that indicated how they came 25 different expected return assumptions for Page 846 Page 847 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 each valuation. discount rate for the time period around 3 3 which the withdrawal liability calculation So I cannot accept that 7.5 was the 4 4 building-block approach in each and every was made? 5 5 one of those years because with different A I don't know whether they did it 6 asset mixes, it would be highly implausible 6 then or at a different time or whether they 7 7 just did it at some other date and left the that they come up with the same answer. 8 8 O So it's your actuarial judgment, number unchanged. I have no idea when and 9 9 even though -- strike that. if they did it. 10 It's your actuarial judgment based 10 All right. 11 on what you have looked at that you do not 11 Now I want to ask a different 12 believe that the actuary for this plan in 12 question. I want you to assume that they 13 13 fact used the building-block approach? did it, okav. 14 I cannot believe they used the 14 Assume that they developed 15 15 building-block approach and applied it for 7.5 percent using the building-block 16 each and every one of those years, because 16 approach. Given that assumption, would it 17 if they had done so, they probably would 17 be proper to use the distinct cash flow 18 have come up with a different expected 18 matching method to develop a different rate 19 return on plan assets for each and every one 19 solely for withdrawal liability purposes? 20 20 of those valuations. Well, let's rephrase it that my 21 21 Q I just want to drill down quickly view is maybe they should have used the cash 22 on this. 22 flow discount method for both. 23 Are you sceptical about whether the 23 But that's not the question that I 24 plan's actuary in this case used the 24 asked. Just answer the question. 25 building-block approach for developing the 25 So, if appropriate, I think that

Page 849 Page 848 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 believe it's 414(1) -- I believe that as a the cash flow method is the appropriate 3 3 single plan, all assets are available for method and that perhaps both of them should 4 4 have been done using the cash flow method. all benefits. 5 In your experience with 5 Q Okav. 6 Doctor, do you recall that in 6 multiemployer plans, am I correct that 7 7 withdrawal liability payments are typically connection with your direct examination, you 8 8 made into the same pool of assets and discussed a Section 4213 of ERISA which 9 9 invested alongside employer contributions contains the statutory requirement that 10 10 actuarial assumptions and methods that are and any other sources of income for the 11 used to calculate withdrawal liability need 11 pension plan, correct? 12 12 A Most multiemployer funds will have in the aggregate to be reasonable? 13 13 A I believe so. If I could have a one pool of assets where they invest all the 14 14 copy of my report, it would help. money. 15 15 O And that would include the May I look at it? 16 16 withdrawal liability payments that they O Yes, absolutely. 17 17 receive from the withdrawing employers, So could you repeat the question? Α 18 18 Sure. I asked you, frankly, to correct? 19 19 recall your direct examination testimony and Α Correct. 20 And the withdrawal liability 20 whether in connection with the direct 21 21 payments are used by multiemployer plans to examination you had agreed with the legal 22 22 pay all liabilities and benefits just like proposition that for purposes of withdrawal 23 23 regular employer contributions, correct? liability calculations, actuarial 24 24 All the money is in one trust fund. assumptions and methods need, in the 25 And under Internal Revenue Section -- I 25 aggregate, to be reasonable? Page 850 Page 851 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 A That's what the statute says. It or it could be in the aggregate -- and I'd 3 3 says "must select assumptions and methods have to look at the specifics. I know 4 4 which, in the aggregate, are reasonable." single-employer plans, it's each assumption. 5 5 Q And this requirement to select Multiemployer plans, historically was in the 6 6 actuarial assumptions and methods that in aggregate. But I believe they may have made 7 7 the aggregate are reasonable, this some changes and I'd have to check the exact 8 8 requirement is not unique to the withdrawal wording. 9 9 liability context. It also applies to Q Do you agree that the use of the 10 10 actuaries in other contexts? same language in these different contexts 11 11 tends to act as a check on the actuary's There are other contexts. Some 12 12 discretion? require that each assumption be reasonable, 13 13 The actuary could not -- assuming and others require that the assumptions in 14 14 the aggregate be reasonable. We would have all the other assumptions are reasonable, 15 to look at the specific cite to determine 15 the actuary could not select a zero percent 16 16 discount rate or select a 25 percent whether it is in the aggregate or assumption 17 17 discount rate because those would not in the by assumption. 18 18 Q And this requirement that actuarial aggregate be reasonable. 19 19 So there is some -- I won't call assumptions and methods be used which in the 20 20 "handcuffing" -- but some limitations put on aggregate are reasonable, does that also 21 21 apply to a plan and satisfy minimum funding the actuary.

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23

24

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Yes, subject to. In some instances

may require each assumption to be reasonable

it's a stronger test on funding that they

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25

requirements?

But I asked a slightly different

describe actuarial assumptions and methods

question. My question was: The ERISA

statute employ's identical language to

	Page 852		Page 853
1		1	
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	to be used in determining whether a plan is	2	the minimum funding requirements would go up
3	satisfying minimum funding requirements and	4	and make it more difficult for the fund to
4	properly calculating withdrawal liability,		satisfy minimum funding requirements.
5	correct?	5	Q Do you agree with the notion that
6 7	A It uses similar language. However,	7	the discount rate assumption that is used to
	I believe what that does is it puts similar	8	compute unfunded vested benefits for
8 9	boundaries on both. It does not require the	9	withdrawal liability purposes is a critical
10	same answer for both.	10	assumption to the analysis? A The discount rate is a critical
11	Q And would it be fair to	11	
12	characterize those boundaries as a check on	12	assumption in determining withdrawal
13	the actuary's discretion?	13	liability and unfunded vested benefits.
14	A They are limitations on the	14	Q Do you agree thatA But as is mortality and other
15	actuary's discretion. I don't know if you call it a "check." It's a limitation.	15	· ·
16		16	assumptions.
17	Q Do you agree that use of assumptions such as low interest rates, that	17	Q Do you agree that the discount rate used to compute unfunded vested benefits for
18	would tend to increase the fund's unfunded	18	withdrawal liability purposes must be used
19	vested liability for withdrawal liability	19	for other purposes as well?
20	purposes, would also make it more difficult	20	A What other purposes?
21	for the plan to satisfy minimum funding	21	Q Minimum funding, for example?
22	requirements if those same assumptions were	22	A I believe the assumptions are
23	used?	23	permitted to be the same and are permitted
24	A Those same assumptions if you	24	to be different.
25	lower the discount rate for minimum funding,	25	Q So am I correct that you disagree
	lower the discount rate for minimum randing,		Q 50 am i correct mat you disagree
	Page 854		Page 855
1		1	
1 2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV
	ARBITRATION - VOLUME IV that the discount rate used to compute		ARBITRATION - VOLUME IV fine. Make it more clear.
2	ARBITRATION - VOLUME IV that the discount rate used to compute unfunded vested benefits for withdrawal	2	ARBITRATION - VOLUME IV fine. Make it more clear. BY MR. MILLER:
2	ARBITRATION - VOLUME IV that the discount rate used to compute unfunded vested benefits for withdrawal liability purposes must be used for minimum	2	ARBITRATION - VOLUME IV fine. Make it more clear. BY MR. MILLER: Q Do you believe that there are any
2 3 4	ARBITRATION - VOLUME IV that the discount rate used to compute unfunded vested benefits for withdrawal liability purposes must be used for minimum funding purposes?	2 3 4	ARBITRATION - VOLUME IV fine. Make it more clear. BY MR. MILLER: Q Do you believe that there are any instances in which an actuary needs to use
2 3 4 5	ARBITRATION - VOLUME IV that the discount rate used to compute unfunded vested benefits for withdrawal liability purposes must be used for minimum	2 3 4 5	ARBITRATION - VOLUME IV fine. Make it more clear. BY MR. MILLER: Q Do you believe that there are any instances in which an actuary needs to use the same discount rate that it is using to
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	Page 856	Page 857
1		
1	ARBITRATION - VOLUME IV	1 ARBITRATION - VOLUME IV
2	question here?	2 unreasonable, that that single unreasonable 3 actuarial assumption is capable, depending
3	MR. MILLER: I'm asking based	detain assumption is capable, depending
4	as an actuarial judgment matter.	on its magnitude, of rendering the actuarial
5	ARBITRATOR IRVINGS: You can	assumptions in the aggregate to be
6 7	ask him based on actuarial judgment	6 unreasonable?
8	whether he must use the same. But to	A A single unreasonable assumption
9	ask him to decide whether a court is	coura ena up resurring in the withdrawar
10	right or wrong	indomity of the assumptions in the
11	MR. MILLER: I'll withdraw the	aggregate being reasonable or unreasonable depending on the other factors, such as are
12	question. THE WITNESS: I do not have a	there offsetting assumptions in the other
13	J.D.	direction or not.
14	BY MR. MILLER:	So, for example, if you had all the
15	Q Dr. Kra, you agree, do you not,	assumptions which were barely reasonable on
16	that even a single unreasonable actuarial	one end and then you had another assumption
17	assumption is capable of rendering actuarial	way off the chart just further down, then it
18	assumptions that are used to compute	way off the chart just further down, then it would be unreasonable.
19	withdrawal liability unreasonable in the	On the other hand, if all the other
20	aggregate?	assumptions were just at the upper end on
21	A I'm sorry?	one extreme and this assumption were down on
22	Q Let me restate the question.	the other side unreasonable, on the
23	Do you agree that, if a single	aggregate you could have very reasonable
24	actuarial assumption that's part of the	results.
25	withdrawal liability calculation is	So the selection of one
	,	
	Page 858	Page 859
1	Page 858 ARBITRATION - VOLUME IV	Page 859 ARBITRATION - VOLUME IV
1 2	ARBITRATION - VOLUME IV unreasonable assumption does not necessarily	
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¹ ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
² lunch.	² A I'm.
³ ARBITRATOR IRVINGS: Yes.	Q And by whom are you employed?
4 MR. RICHMAN: I have no	⁴ A I'm a partner at WeiserMazars LLP.
⁵ questions.	⁵ Q How long have you been there?
6 MR. MILLER: I would like to	6 A Twenty years.
7 pursue further Bader swap no, just	⁷ Q And what is your current position
8 kidding.	8 there?
9 ARBITRATOR IRVINGS: Okay.	9 A Partner.
Fine. Thank you very much.	Q How long have you been a partner?
11 MR. MILLER: We're off the	11 A Twenty years. 12 O What are your duties at Weiser?
record.	what are your duties at weiser:
(11 fatietieoti feeess was taken at	71 I'm an addit partner and enem
14 12:16 p.m. through 1:39 p.m.)	relationship partities and oversee the addit
	practice of our Employee Benefit group and
16 MITCHELL LEWIS, 17 having been first duly sworn by	our Nonprofit Organizations group. Q Are you familiar with the NMDU
18 Arbitrator Irving, was examined	18 Pension Fund?
and testified as follows:	19 A Lam.
20 DIRECT EXAMINATION BY MR. RICHMAN:	Q And when did you first become
21 Q Good afternoon, Mr. Lewis.	familiar with it?
22 A Good afternoon.	A Weiser became the auditors there
Q How are you today?	when I joined them in 1997.
24 A I'm good. Thank you.	Q And did you have a role with
²⁵ Q Are you currently employed?	respect to Weiser providing services to the
Page 862	Page 863
¹ ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
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Page 864 Page 865 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 all of them, that means more than just you? compensation based on shifts. 3 3 Q And how did you develop that Α Yes. Me and the audit team. 4 4 understanding? And I know from 1997 to 2013 is a 5 Reading the documents, the 5 long period of time. 6 6 Collective Bargaining Agreements, Can you take us through, going 7 7 discussions with the Fund management. backwards from 2013, who participated on 8 8 this audit team from Weiser? Okav. 9 9 There have been a number of changes With whom in Fund management did 10 10 you have discussions with about this? during that time period both as a result of 11 11 Our primary contact was the Fund people coming and going and promotions, so 12 12 director Murray Schwartz; however, we also it would be impossible for me to exactly lay 13 13 interacted with the various individuals that out when and where all of the individuals 14 14 were. But each year there was an audit team worked at the Fund office. 15 15 Do you know who those individuals that had a manager and a staff of one or two 16 16 are or were? or three people. 17 17 A Barbara Albergo was the accountant, Okay. And to whom did the manager 18 18 report to? bookkeeper. 19 19 There were a number of women who A To me. 20 worked in the office with various tasks, and 20 Q And during the time you were 21 21 I don't remember their last names now. But auditor for the Pension Fund, did you 22 22 they each had areas of expertise that they develop an understanding specifically about 23 23 how The New York Times contributed to the worked on and we interacted with all of 24 24 Pension Fund? them 25 When you say "we" interacted with 25 Our understanding was that New York Q Page 866 Page 867 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 Times' contributions were no different. Fund. 3 3 their basic contribution, as any of the And when you did this audit, did 4 4 other contributing employers. you or your team go to the contributing 5 5 Q And how did you develop that employer, or was this done your office? 6 6 In most cases, we would go to the understanding? 7 7 From our years of being there, our offices. There were certain electronic 8 8 reading the Collective Bargaining records that were transferred back and 9 9 Agreements, our review of the records forth, but generally we would go to the 10 10 reflecting contributions coming in. contributing employer's office. 11 11 Now, when you went to a Q Have you been to The New York 12 12 contributing employer to do a payroll audit, Times' offices? 13 13 what would you do? A I have not, no. 14 14 We would randomly select a period But members of your team have been Α O 15 15 of time. there? 16 16 During the period we were Yes, I believe. My recollection is Α reviewing, usually a year period, maybe two 17 17 yes. 18 18 years, we would select a weekly period based Q Okay. 19 19 on payroll, and we would request from the And who decided whether to conduct 20 20 contributing employer their payroll records of a payroll audit of a contributing 21 21 that related to the participating employees employer? 22 22 of NMDU. Α Fund director would talk to us and 23 23 And we would then use that data to then he would talk to the trustees, and it 24 24 compare it to the contribution reports and would come as a starting point from there. 25 25 the dollars that were contributed to the Who was the person, if there was

Page 868 Page 869 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 risk-based approach, so we would review what one person, or group of people, if there was 3 3 we believed to be the risk areas and focus a group of people, who actually told you to 4 4 go do an audit of X-employer? our procedures in those areas: Investment 5 5 portfolio, evaluation of investments, Α Fund director. 6 6 That's Mr. Schwartz? confirmations would be sent, review of O 7 7 pricing, review of contributions by A Yes. 8 8 contributing employers, operating expenses You testified already that you 9 9 of the Fund; all those factored into the oversaw the performance of an annual audit? 10 10 Α Yes various procedures that we performed the 11 And can you take us through the 11 duty on. 12 12 process of doing that? 0 What was the end result of your 13 13 ERISA requires Form 5500 to have an audit? 14 14 audit attached to it. Well, the end result was an issued Α 15 15 The audit is conducted by an opinion that was signed and attached to the 16 16 independent auditing firm, independent Fund's financial statements. 17 17 And who signed the opinion provided qualified public accounting firm, which we 18 18 were, to give an opinion on the financial by Weiser to the Pension Fund? 19 19 statements and the attached footnotes. A I signed the opinion. 20 20 Notes of the financial statement. Let me show you Exhibit 65. 21 21 If you can take a look at that, And that was our primary 22 22 thumb through that. I'm not going to ask responsibility of the audit team. 23 23 you to read the whole thing, but just take a And how would you go about 24 24 fulfilling that responsibility? look and see what is encompassed within the 25 A Well, they thought it was a 25 exhibit. Page 870 Page 871 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 says, "Participating employers contribute to Α 3 3 the plan based on the number of shifts Can you identify for us what this Q 4 4 is? worked by employees as defined by the 5 5 Collective Bargaining Agreements. The plan This appears to be the filing of 6 the Form 5500 which includes the audited 6 is noncontributory for employees." 7 7 Do you see that? financial statement for May 31, 2003. 8 8 Okay. And what I would like you to Yes, I do. Α 9 9 And did you write that sentence? turn to, where I have my green tab. Just 10 10 I reviewed this sentence. I'm not kidding. 11 11 sure I technically wrote it. If you look at the numbers at the 12 top, you'll see at the very top is the last 12 Okay. And is there somebody else 13 13 four numbers, 0294. who wrote the sentence? 14 Sorry. Page Numbers 0028, which is 14 Well, the footnotes are the 15 in the second line. 15 representation of the Fund. So as auditors. 16 Do you see that? 16 we are -- we give an opinion on the 17 17 accuracy, the fairness of the financials Α Yes. 18 And if you turn to 0035. 18 including the notes. So, technically, they O 19 19 are not our notes, they're the Fund's notes, Α 20 20 And on the top of that page, the O but we review them with Fund management for 21 page itself is numbered 2. 21 accuracy. 22 22 Do you see that? Okay. And did you review this note 23 Yes. 23 Α about contributions with Fund management? 24 And there is a heading called 24 Α 25 Contributions and there is a sentence that 25 0 And who at Fund management did you

Dama 072	Dama 072
Page 872	Page 873
ARBITRATION - VOLUME IV	ARBITRATION - VOLUME IV
review it with?	like.
A Fund director.	MR. EATON: Just tell me which
4 Q Mr. Schwartz?	ones they are.
5 A Murray Schwartz, yes.	5 MR. RICHMAN: Page number is
6 Q Did you review all the notes with	6 37. And then the next one is 33.
7 Mr. Schwartz?	7 I'm sorry, let me retract that and
8 A Yes.	let me just go through it. It may just
9 Q Can you tell me about that process?	9 be easier.
A We liked to read the notes to the	BY MR. RICHMAN:
financial statements before the financials	Q So if you turn Exhibit 66.
were issued, and so he would go through them	Do you see that:
with us at sort of an exit meeting prior to	13 A Yes.
the finalizing of the audit process.	Q Can you identify what this is,
Q So were you present when he was	Exhibit 66?
reviewing these notes?	A This is the notes to the financial
17 A I was.	statement for the year ending May 31, 2004.
Q Did he ask questions?	2 This if you take a look at I age 37,
A Sometimes he does he did, yes.	which is also has "Page 2" on the top of the
Q Do you recall him having any	actual page, what process did you follow in
questions about the Contributions section?	dealing with this statement about
A No, no.	contributions?
MR. RICHMAN: I'll ask Miguel,	A We would have reviewed the
I've got two more like this exactly.	financial statement with Mr. Schwartz, and
I can go through them if you would	either he accepted it as it was or he'd
Page 874	Page 875
¹ ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
² modify if he thought that was appropriate.	² A I'm here.
 modify if he thought that was appropriate. And we would go and conclude the process and 	A I'm here. And you see it says
modify if he thought that was appropriate. And we would go and conclude the process and then move forward with our process of	2 A I'm here. 3 Q And you see it says 4 "Contributions"?
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modify if he thought that was appropriate. And we would go and conclude the process and then move forward with our process of issuing and completing the audit. Q Did he have any issue with this	2 A I'm here. 3 Q And you see it says 4 "Contributions"? 5 A Yes. 6 Q And this time there's a 7 on the
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modify if he thought that was appropriate. And we would go and conclude the process and then move forward with our process of issuing and completing the audit. Q Did he have any issue with this description of contributions? A No, he didn't. Q Let me have you turn to 67. Do you see that? A I do. Q And can you tell us what that is? A These are notes to the financial statement period ending May 31, 2005. Q And let's see if I can shorten this. Did you follow the same process in issuing the report, the auditor's opinion, as you did for the two previous ones that we just took a look at? A We did. We took the same approach, same process.	A I'm here. Q And you see it says "Contributions"? A Yes. Q And this time there's a 7 on the bottom of the page, right? A There is. Q And this description is different than the description in the two previous exhibits, 65 and 66, correct? A It is. Q Can you tell us the process as to how the language was changed for this audit report? A Well, this is eight, nine, ten years ago, so it's hard to remember exactly what happened with the discussions at the time. However, there were occasions when Mr. Schwartz would read something and think that it should be better described or
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Page 877 Page 876 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 discussion about some of the contributions Again, I'm just trying to recall. 3 3 not relating to Collective Bargaining The opening sentence talked about 4 4 Agreement. For example, the Union made shifts worked, and there must have been some 5 5 contributions not under Collective conversation at the time. Well there are 6 6 Bargaining Agreement but under something contributions made for nonworking shifts, 7 7 vacation, sick, Workers' Comp, things like similar. 8 8 So my recollection is at the time that. So he must have felt we should expand 9 9 the description a bit to include those they were reviewing that and if -- where he 10 10 felt this footnote should be expanded. factors. 11 11 And did you agree with that? Okay. Q 12 12 And if you take a look at the We did. 13 13 If I could just say one thing. The second-to-last sentence of that description, 14 14 opening paragraph in Note 1 says it's just a it says, "In addition, under certain 15 15 brief description. circumstances specified in their Collective 16 16 Bargaining Agreements, participating So the details, the real details to 17 17 employers made contributions to the plan for the Collective Bargaining Agreement are in 18 18 the Collective Bargaining Agreements shifts that were paid but not work by their 19 19 employees." themselves. This is just a summary based on 20 20 Do you see that? the account standards. 21 21 A Yes. Thank you. 22 22 And that is in addition to what was During the time that you were the 23 23 auditor for the Pension Fund, was in 65, Exhibit 65 and 66, correct? 24 Yes. 24 Mr. Schwartz always the Fund manager? Α 25 25 A I recall the very first year -- as And how did that get in there? Q Page 878 Page 879 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 a partner at M.R. Weiser, Mr. Schwartz was 2 Exhibit 70, it is -- the Bates 3 3 the Fund manager the whole time. numbers is easiest to go by -- 2042. 4 4 And during the time that you were MR. EATON: Okay. 5 5 MR. RICHMAN: And Exhibit 71 is the audit partner for the Pension Fund, did 6 6 the process of meeting with Mr. Schwartz, Bates 1572. 7 7 did the reviewing the footnotes change? MR. EATON: Okay. 8 8 They did not change. Except the MR. RICHMAN: And 72 is Bates 9 9 very final year, May 31, '13, was different 1719. 10 10 because the Fund office had just closed and MR. EATON: Okay. 11 11 that report was issued in March of '14. So MR. RICHMAN: And 74 is Bates 12 12 during that time, we did not have that 13 13 conversation with Mr. Schwartz. ARBITRATOR IRVINGS: 74? What 14 14 MR. RICHMAN: Now, Miguel, I happened to 73? 15 15 MR. RICHMAN: Oh, okay. can go through 68 through 75. 16 16 Seventy-three was the --Do you want to take a look at them 17 17 and see if --Seventy-four is the amended --18 18 MR. EATON: Yeah, let me take a We can do 73. 19 19 look at them. ARBITRATOR IRVINGS: I'm sorry. 20 20 MR. RICHMAN: Sixty-eight is On 73, it's on Page 2118. 21 21 Page 61 and it's -- the Bates Number MR. EATON: Seventy-three is 22 is 1487. 22 fine with us. 23 23 MR. EATON: Okay. MR. RICHMAN: And 74 is on 24 24 MR. RICHMAN: Sixty-nine is 1953 25 25 Page 59. And it's Bates 1793. MR. EATON: Okay for 74.

	Page 880		Page 881
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	MR. RICHMAN: And 75 is on	2	A Sick. I don't recall exactly.
3	1637.	3	Those are certainly a number of days that
4	MR. EATON: Okay.	4	fell into this category.
5	MR. RICHMAN: And 76 is 1869.	5	Q Now, when you did a payroll audit,
6	MR. EATON: Okay.	6	did you note the position of the person for
7	BY MR. RICHMAN:	7	whom the employer was contributing?
8	Q Mr. Lewis, maybe we'll just take a	8	A No, we would not know the position.
9	look at Exhibit 76 so you can take a look at	9	Q And what would you see or look at?
10	the language.	10	
11	And we're going to Bates Number	11	A We would see payroll journals that would list the individual employees of the
12	1869 which is on the bottom.	12	
13		13	contributing employer and their pay for that
14	Okay.	14	period, gross pay, the net pay,
15	And in the second-to-last sentence	15	withholdings.
16	of the paragraph under Contributions, it	16	I don't recall exactly, but
17	says, "Under certain circumstances"	17	generally that's what the pay would have.
18	Do you see that language?	18	It might have that's primarily
19	A Yes.	19	Q What you would look at?
20	Q " specified in the Collective	20	A What we would look at.
	Bargaining Agreements."		Q Were there ever situations where
21	Can you give us an example of those	21	you had questions for the employer,
22	circumstances?	22	contributing employer?
23	A Vacation pay, not worked, but was	23	A There were occasions, yes.
24	paid. Workers' Comp.	24	Q And how did you deal with those
25	Q Were there others as well?	25	questions?
	Page 882		Page 883
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	A We had a whoever the contact was	2	object. It's vague. There's a long
3	at the contributing employer we were	3	time period going on here.
4	interacting with would be the person we	4	ARBITRATOR IRVINGS: Ever? Go
5	would ask questions of.	5	ahead. I'm saying at any point did
6	Q Did you discuss your annual audit	6	Mr. Hayes object to that's fine.
7	reports at a trustees meeting?	7	MR. RICHMAN: Okay.
8	A We did discuss our annual reports,	8	BY MR. RICHMAN:
9	yes.	9	Q Did at any point Mr. Hayes, during
10	Q And what was the nature of the	10	the time he was a trustee, object to the
11	discussion?	11	language of the contribution provisions that
12	A The reports had already been issued	12	we've been looking at in your audit reports?
13	and returns had been filed by that time.	13	A No.
14	Generally, just an overview of the	14	Q Did any of the trustees other than
1		15	Mr. Hayes at any time object to the language
15	audit, and the report itself was included in		wir. Hayes at any time object to the language
	audit, and the report itself was included in the package of all the trustees.	16	that was in the Contribution section of the
15			
15 16	the package of all the trustees.	16	that was in the Contribution section of the
15 16 17	the package of all the trustees. Q I just want to make sure I	16 17	that was in the Contribution section of the audit report?
15 16 17 18	the package of all the trustees. Q I just want to make sure I understand.	16 17 18	that was in the Contribution section of the audit report? A No.
15 16 17 18 19	the package of all the trustees. Q I just want to make sure I understand. Did the trustees have a copy of the	16 17 18 19	that was in the Contribution section of the audit report? A No. Q Did Neal Schelberg?
15 16 17 18 19 20	the package of all the trustees. Q I just want to make sure I understand. Did the trustees have a copy of the annual audit? A Yes.	16 17 18 19 20	that was in the Contribution section of the audit report? A No. Q Did Neal Schelberg? Do you know who Neal Schelberg is?
15 16 17 18 19 20 21	the package of all the trustees. Q I just want to make sure I understand. Did the trustees have a copy of the annual audit? A Yes. Q Did you ever get a question from	16 17 18 19 20 21	that was in the Contribution section of the audit report? A No. Q Did Neal Schelberg? Do you know who Neal Schelberg is? A I do. Q And who is he?
15 16 17 18 19 20 21 22	the package of all the trustees. Q I just want to make sure I understand. Did the trustees have a copy of the annual audit? A Yes.	16 17 18 19 20 21 22	that was in the Contribution section of the audit report? A No. Q Did Neal Schelberg? Do you know who Neal Schelberg is? A I do. Q And who is he? A One of the counsels to the Fund.
15 16 17 18 19 20 21 22 23	the package of all the trustees. Q I just want to make sure I understand. Did the trustees have a copy of the annual audit? A Yes. Q Did you ever get a question from Mr. Hayes with respect to the contribution	16 17 18 19 20 21 22 23	that was in the Contribution section of the audit report? A No. Q Did Neal Schelberg? Do you know who Neal Schelberg is? A I do. Q And who is he? A One of the counsels to the Fund.

	Page 884	Page 885
1	ARBITRATION - VOLUME IV	1 ARBITRATION - VOLUME IV
2	section in your audit opinion?	² if I may.
3	A No, no.	So you could turn to the Bates
4	Q Let me just ask a collective: Did	Number 1684, please. It's Schedule R.
5	anybody object to the language concerning	5 A Okay.
6	the contribution provisions that was	6 Q Now, what is Schedule R a schedule
7	reviewed in your audit report?	7 to?
8	A No, no one ever did.	8 A Schedule R is an attachment to
9	Q Did you ever review I'm sorry.	9 Form 5500.
10	Withdraw that.	Q And for the Pension Fund, did you
11	Did the Fund have a standardized	complete Schedule R?
12	remittance report for employers to use in	12 A Yes, we did.
13	contributing to the Fund?	13 Q And can you tell us what shows up
14	A No. The Fund did not have a	on Schedule R?
15	standard format.	15 A This was a schedule of contributing
16	They accepted the reporting formats	employers that had contributed more than
17	of the individual contributing employers.	5 percent of total contributions for the
18	Q And were all the formats the same	plan year.
19	as the contributing employers?	19 Q And you see Exhibit 72, can you
20	A They were all different.	20 identify the contributing employers who
21	Q I saw you smile.	contributed more than 5 percent of plan year
22	A Each contributing employer had	to the Pension Fund?
23	their own system, software, formats, and the	23 A Daily News, New York Times, New
24	Fund office accepted them as they were.	York Post, Hudson News, Newark Morning
25	Q I want to turn to Exhibit 72 again,	25 Ledger.
	\(\text{1 want to tain to Exmon 72 again,}	Deuger.
	Page 886	Page 887
1		-
	ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
1 2 3	ARBITRATION - VOLUME IV Q If you would look at on the	ARBITRATION - VOLUME IV schedule showing different rates based on
2	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13?	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked.
2	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes.	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that
2 3 4	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E.	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this
2 3 4 5	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that?	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page?
2 3 4 5 6	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do.	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the
2 3 4 5 6 7	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do. Q And it says, "Contribution rate	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the long night. Saturday night is a particular
2 3 4 5 6 7 8	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do. Q And it says, "Contribution rate information (if more than one rate applies,	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the long night. Saturday night is a particular day of the work week and it was known as a
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2 3 4 5 6 7 8 9 10 11 12 13	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do. Q And it says, "Contribution rate information (if more than one rate applies, check this box and see instructions regarding required attachment), otherwise complete Items 13E1 and 13E2." Now, in Exhibit 72, the box is	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the long night. Saturday night is a particular day of the work week and it was known as a shift. Q And you see on the right-hand side of the page, it says daily high rate, daily low rate with numbers? A Yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do. Q And it says, "Contribution rate information (if more than one rate applies, check this box and see instructions regarding required attachment), otherwise complete Items 13E1 and 13E2." Now, in Exhibit 72, the box is checked. Did you check that box? A We did.	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the long night. Saturday night is a particular day of the work week and it was known as a shift. Q And you see on the right-hand side of the page, it says daily high rate, daily low rate with numbers? A Yes. Q What are those numbers? A Those are the dollars required to
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do. Q And it says, "Contribution rate information (if more than one rate applies, check this box and see instructions regarding required attachment), otherwise complete Items 13E1 and 13E2." Now, in Exhibit 72, the box is checked. Did you check that box? A We did. Q Okay. And did you attach something to the schedule? MR. RICHMAN: Do you mind if I help him find the page?	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the long night. Saturday night is a particular day of the work week and it was known as a shift. Q And you see on the right-hand side of the page, it says daily high rate, daily low rate with numbers? A Yes. Q What are those numbers? A Those are the dollars required to be contributed for that particular shift that was worked in particular for those employees. Q Let's go back to 1684, please. You got that? A I do.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do. Q And it says, "Contribution rate information (if more than one rate applies, check this box and see instructions regarding required attachment), otherwise complete Items 13E1 and 13E2." Now, in Exhibit 72, the box is checked. Did you check that box? A We did. Q Okay. And did you attach something to the schedule? MR. RICHMAN: Do you mind if I help him find the page? MR. MILLER: That's fine. BY MR. RICHMAN: Q If you take a look at 1709. And if you can tell us what that is.	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the long night. Saturday night is a particular day of the work week and it was known as a shift. Q And you see on the right-hand side of the page, it says daily high rate, daily low rate with numbers? A Yes. Q What are those numbers? A Those are the dollars required to be contributed for that particular shift that was worked in particular for those employees. Q Let's go back to 1684, please. You got that? A I do. Q So if you look E2, it says "base unit measure" and it has a box for hourly, a
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME IV Q If you would look at on the left-hand side, do you see the Number 13? A Yes. Q And go down to E. Do you see that? A I do. Q And it says, "Contribution rate information (if more than one rate applies, check this box and see instructions regarding required attachment), otherwise complete Items 13E1 and 13E2." Now, in Exhibit 72, the box is checked. Did you check that box? A We did. Q Okay. And did you attach something to the schedule? MR. RICHMAN: Do you mind if I help him find the page? MR. MILLER: That's fine. BY MR. RICHMAN: Q If you take a look at 1709. And if	ARBITRATION - VOLUME IV schedule showing different rates based on these particular shifts that were worked. Q Okay. And you say "shifts that were worked." Where are shifts on this page? A The day rate, the short night, the long night. Saturday night is a particular day of the work week and it was known as a shift. Q And you see on the right-hand side of the page, it says daily high rate, daily low rate with numbers? A Yes. Q What are those numbers? A Yes. C What are those numbers? A Those are the dollars required to be contributed for that particular shift that was worked in particular for those employees. Q Let's go back to 1684, please. You got that? A I do. Q So if you look E2, it says "base

	Page 888		Page 889
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	And then it has a box that says "other	2	A Yes.
3	specify."	3	Q How come there were two that year?
4	I'm just reading the form parts	4	A There were two because the second
5	right now.	5	form was an amended return because of
6	A Yes.	6	inaccuracy in the census information.
7	Q And you filled that in by checking	7	Q In the census information.
8	the box and writing "8 percent of daily wage	8	Did it have anything to do with the
9	rates."	9	contribution rate?
10	A We did.	10	A No.
11	Q Why did you do that?	11	Q Okay. So take a look at
12	A Because that's what the Collective	12	Exhibit 74, please. And take a look at
13	Bargaining Agreement called for.	13	1914.
14	Q Do you know what a base unit	14	A Okay.
15	measure is?	15	Q Now, on the left-hand side of the
16	A It's not a term I used. So	16	page under 13, you see the names of the
17	generally, no.	17	contributing employers?
18	Q Now let's go to 74.	18	A Yes.
19	There were two	19	Q And is there any difference in the
20	Exhibit 73 is a Form 5500 and	20	way you filled out this for 2010,
21	you can look at it in your book for the	21	Exhibit 74, and what you did for the prior
22	year 2010.	22	year?
23	And Exhibit 74, if you flip,	23	A No difference, other than the
24	there's also a Form 5500 for the year 2010.	24	dollar amounts, that I recall.
25	Do you see that?	25	Q Okay. Let's turn to 1940, please,
	•		
	Page 890		Page 891
1		1	
1 2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV
	ARBITRATION - VOLUME IV of that same exhibit.		ARBITRATION - VOLUME IV Do you see that?
2	ARBITRATION - VOLUME IV of that same exhibit. A Okay.	2	ARBITRATION - VOLUME IV Do you see that? A Yes.
2	ARBITRATION - VOLUME IV of that same exhibit. A Okay. Q And is that information any	2 3	ARBITRATION - VOLUME IV Do you see that? A Yes. Q But it's hard to prove a negative,
2 3 4	ARBITRATION - VOLUME IV of that same exhibit. A Okay. Q And is that information any different than the information that you	2 3 4	ARBITRATION - VOLUME IV Do you see that? A Yes. Q But it's hard to prove a negative, but I can tell you having looked through
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME IV of that same exhibit. A Okay. Q And is that information any different than the information that you provided in Exhibit 72? A It's the same format. Q And if you flip back and forth, you see the rates are different. A If the rates are different, it's because there was a new updated Collective Bargaining Agreement or something that would have changed the rates. Q But the format is the same? A Yes. Q Now, let's take a look at 75, Exhibit 75, please. So if you take a look at Bates Number 1611, please. A Okay. Q Is this the same format as the other two that we looked at? A Yes, it is.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION - VOLUME IV Do you see that? A Yes. Q But it's hard to prove a negative, but I can tell you having looked through this, there is no attachment. A Right. Q And if you take a look at 76, 1834. And 13E, you checked the box. Do you see that? A Yes. Q And I can tell you we can all take a look and if someone finds it they get extra points, because we haven't been able to find an attachment for either Exhibit 75 or 76. And can you tell us why there is no attachment? A I cannot. Should have been attached. Q Did you ever do an audit of C & S? A We did do an audit of C & S. Q Do you know who asked you to do

	Page 892		Page 893
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	Q Do you know why he asked you to do	2	Q And there is a discussion about the
3	that audit?	3	City & Suburban audit?
4	A Because C & S was closing and the	4	A Yes. I see that.
5	Fund felt that before the records scattered,	5	Q And it says that "attached hereto
6	that it makes sense to go in there and	6	as Exhibit G." It's a letter from you dated
7	review and do procedures to see about the	7	April 20, 2010.
8	compliance with the contributions.	8	Do you see that?
9	Q And were you involved in that	9	A I do.
10	audit?	10	Q And before we turn to that exhibit,
11	A I was.	11	if you turn the page to 1245, you see the
12	Q And what was your role in the	12	last sentence says, "A meeting has been
13	audit?	13	scheduled to discuss and reconcile the
14	A I oversaw the process and	14	findings with the employer after which you
15	procedures.	15	advised the Pension Fund accordingly."
16	Q Let me show you Exhibit 51.	16	Do you see that?
17	Do you see that?	17	A I do.
18	A I do.	18	Q And did you ever schedule a meeting
19	Q And these are minutes of a trustees	19	with C & S?
20	meeting; is that correct?	20	A We did. Technically, we had our
21	A Yes.	21	meeting with The New York Times.
22	Q Let's turn to page 1244.	22	Q And why did you have the meeting
23	You see Roman numeral VII and you	23	with The New York Times?
24	see C?	24	A Because they were our contact. The
25	A Yes.	25	records were maintained by The Times and
	Page 894		Page 895
1		1	Page 895 ARBITRATION - VOLUME IV
1 2	Page 894 ARBITRATION - VOLUME IV those were the individuals we were directed	1 2	ARBITRATION - VOLUME IV
	ARBITRATION - VOLUME IV		· · · · · · · · · · · · · · · · · · ·
2	ARBITRATION - VOLUME IV those were the individuals we were directed	2	ARBITRATION - VOLUME IV this audit, was any of it done at the
2	ARBITRATION - VOLUME IV those were the individuals we were directed to contact to do the audit.	2 3 4 5	ARBITRATION - VOLUME IV this audit, was any of it done at the offices or facilities at The New York Times?
2 3 4	ARBITRATION - VOLUME IV those were the individuals we were directed to contact to do the audit. Q And let's go to what is marked Bates Number 1246, please. A Okay.	2 3 4	ARBITRATION - VOLUME IV this audit, was any of it done at the offices or facilities at The New York Times? A I can't say specifically. I believe they were. Q And if you look at the second
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	Page 896		Page 897
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	of shifts, why did you have to recalculate	2	such as vacation days, paid sick days,
3	the number of shifts?	3	et cetera in the computation of
4	A I'd be guessing. Either the	4	contributions."
5	numbers weren't there, the shifts were not	5	What is the "test of qualifying
6	easily reconcilable from the reports we had,	6	shifts"?
7	but it was something that we had to do.	7	A That was our review of these
8	Q Okay.	8	payroll records to see that all the shifts
9	Well, the Pension Fund	9	were included "qualifying shifts" meaning
10	contributions came in on what basis? I'm	10	somebody might have worked or just been paid
11	talking about a time period.	11	for nonworking shifts to see that they were
12	A Monthly, I believe.	12	included in the contributions.
13	Q And when did Welfare contributions	13	Q If you turn the page to 1247, Bates
14	come in?	14	number.
15		15	
16	A I believe weekly.	16	Do you see that? A Yes.
17	Q And did The Times report shifts on	17	
18	a monthly basis?	18	Q At the top, it's A, Finding.
19	A They reported shifts I believe	19	Can you tell us what your finding
20	they reported shifts on a monthly basis.	20	was?
21	Q On a monthly basis?	21	A Our finding was that the rate that was used to calculate the shift contribution
22	A You know, I don't want to guess. I	22	
23	don't recall exactly.	23	was different than what we believed it
23	Q The second point that you have is,	23	should have been.
	"The test of qualifying shifts included	25	Q And what did you believe it should
25	verification of inclusion of paid absences	25	have been?
	Daga 900		Daga 900
	Page 898		Page 899
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	_	2	ARBITRATION - VOLUME IV based on the shifts and the percentage, but
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Page 900	Page 901
1 ARBITRATION - VOLUME IV	1 ARBITRATION - VOLUME IV
2 And these are minutes of that	that resulted in the underreporting that we
meeting. The B on Page 1250 is minutes of	identified in our procedures, previously
4 that meeting?	4 talked about.
5 A Yes.	⁵ Q Okay. And would you take a look at
6 Q Do you have any reason to believe	6 the second paragraph. "To address these
7 that you didn't review it	discrepancies, Weiser held meetings,
8 A No.	8 numerous phone calls and e-mail
⁹ Q with the trustees?	⁹ communications with The New York Times over
A No. I'm sorry. You are right.	the past few weeks to finalize a total
Q Just so the record is clear	underreporting of contributions to the
A I was looking at it because the	Pension Fund."
date of the letter was in June and the	Do you see that?
trustees meeting was in December. So it was	14 A Yes.
reviewed with the trustees three months	Q Do you have knowledge who at Weiser
later. That's all I was trying to say.	participated in those meetings?
Q Okay. Got it. Thank you.	A The manager in the engagement, Ivy
And let's take a look at Page 1251	Narissi, and myself.
Bates number.	Q And do you recall who you met with
²⁰ A Okay.	at The Times?
Q And can you tell us what this is?	A Not specifically.
A This was a summary after more	Q Okay. Do you recall where you met?
detailed reviews. And the review with	A Probably the meetings might have
individuals I guess at The Times related to	been at The New York Times with my staff. I
²⁵ C & S to conclude on what the dollars were	remember having some phone conversations.
2 000	D 000
Page 902	Page 903
1 ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
So between us, we did these different	Q Did anyone raise questions about
³ things.	the basis on which The Times should be
4 Q Okay. And let's take a look at	4 contributing to the Pension Fund?
5 Bates Number 1252, please.	5 A No.
6 And if you would look at the top of	6 MR. RICHMAN: I just want to
7 the page, it says "Result."	7 take about five minutes.
8 A Okay.	8 ARBITRATOR IRVINGS: Sure.
9 Q Do you see that?	9 Thank you.
10 A Yes.	(A brief recess was
Q "Times agreed that the hourly rate	taken.)
calculation should only be used for	MR. RICHMAN: Back on.
apprentices" and recalculated the period	13 ARBITRATOR IRVINGS: Go right
January 1, 2007 through December 31, 2008.	ahead.
And how was that recalculated? The Times went back and refigured	MR. RICHMAN: Okay.
The Times went back and rengared,	16 BY MR. RICHMAN: 17 O Mr. Lewis could you tell from
recalculated again based on the appropriate	wir. Eewis, could you tell from
shift fates for the marviadais daring that	Exhibits 45 and 51 now much money was due
period. It was too cumbersome and voluminous for us to have done that.	from the times that the times paid as a
YOUTHINGUS FOR US TO HAVE GONE THAT.	result of its paying an nourly rate versus a
	shift rate?
²¹ Q Okay.	22 ADDITE ATOD IDADICO II
Q Okay. When you discussed this issue at	ARBITRATOR IRVINGS: I'm sorry.
Q Okay. When you discussed this issue at the meeting on September 24, 2010, did	Again, the exhibit?
Q Okay. When you discussed this issue at	ARBITRATOR IR VII VOS. TIII SOITY.

	Page 904		Page 905
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	A I can tell the total amount. Total	2	MR. EATON: And which
3	amount, yes.	3	conclusion are you looking at.
4	Q And what was that?	4	MR. RICHMAN: I was looking at
5	À \$343,289.	5	the conclusion under A.
6	Q But was that the difference of	6	Q You see there is an A and a B?
7	paying between an hourly and a shift rate?	7	A I do.
8	A I'm sorry, I can't	8	The A Finding dollars was really
9	Q Let me put you on Exhibit 51.	9	just an approximation.
10	A Okay.	10	Q Okay.
11	Q And specifically Page 1247, the	11	A It was really unclear at the time.
12	Bates number.	12	Q Okay.
13	A Yes.	13	And is there any okay.
14	Q You see that?	14	Now I want to look at Exhibit 45.
15	A Yes.	15	Can you tell us there how much the actual
16	Q You see at the top it says	16	number was?
17	"Findings"?	17	A Page 3 there is a Finding A, B and
18	A Yes.	18	C.
19	Q And you see your conclusion?	19	Q Yes.
20	A Yes, I do. Approximately \$25,000.	20	ARBITRATOR IRVINGS: Of 45?
21	MR. EATON: I'm sorry. What	21	MR. RICHMAN: Of 45, yes.
22	page?	22	A Re: Calculation, approximately
23	MR. RICHMAN: 1247, in 51.	23	24,000.
24	MR. EATON: Yes.	24	Q And that's on 1253, Bates Number
25	MR. RICHMAN: Okay.	25	1253?
	Page 906		Page 907
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	A Yes.	2	A Well, the shift information really
3	Q Under Finding A?	3	came through the Welfare reporting
4	A Under Finding A.	4	documentation but it was also used for the
5	Q Were The New York Times remittance	5	Pension as well. So same report.
6	reports easy to use?	6	Q And why did that or did it not make
7	A They were not.	7	that easy or difficult to use?
8	MR. EATON: Objection.	8	A Welfare Fund contributions were
9	ARBITRATOR IRVINGS: What's the	9	more frequent than the Pension contributions
10	objection?	10	during the reporting period, so it made it
11	MR. EATON: What sense it's	11	difficult to track one to the other.
12	a vague question.	12	Q But were you able to do that?
13	ARBITRATOR IRVINGS: Well, do	13	A Generally.
14	you have a follow-up question?	14	MR. RICHMAN: I have no further
15	Go ahead.	15	questions.
16	BY MR. RICHMAN:	16	MR. EATON: Why don't we go off
17	Q Why?	17	the record while we rearrange the
18	A There were a number of different	18	room.
19	reports that were submitted by The New York	19	CROSS EXAMINATION BY MR. EATON:
20	Times for various components of	20	Q Good afternoon, Mr. Lewis.
21	contributions as well as just the format of	21	A Good afternoon.
22	the reports and the layout of the shift	22	Q You testified on your direct
23	information.	23	that I think, correct me if I'm wrong
24	Q What specifically about the layout	24	that you are familiar with how the Pension
25	of the shift information?	25	Fund tracks employer contributions?
			- ·

	Dama 000		Dama 000
	Page 908		Page 909
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	A Yes.	2	position and changes in net assets.
3	Q And you are familiar with the	3	Q Okay. And I guess is it fair to
4	remittance reports that employers send to	4	say that a part of ensuring what you just
5	the Pension Fund?	5	mentioned, a part of that would be to ensure
6	A Yes.	6	that the employer contributions are what
7	Q And I think you testified that the	7	they're supposed to be; is that right?
8	reports are not identical from employer to	8	A Fairly presented.
9	employer; is that right?	9	Q And when you conducted
10	A That's right, yes.	10	ARBITRATOR IRVINGS: Just so
11	Q And even the schedule on which the	11	I'm clear, is that a different
12	employers report are not the same; is that	12	answer?
13	correct?	13	THE WITNESS: I'm just trying
14	A Yes, that's correct.	14	to be clear that the auditor gives an
15	Q And one of your roles as the	15	opinion on fairness, fairly
16	auditor was to conduct an annual audit of	16	presented.
17	the Fund; is that right?	17	So however you ask the question,
18	A Yes, that's right.	18	the answer is still the audit opinion is
19	Q And is it fair to say that the goal	19	based on present fairly, not total
20	was to ensure that the Fund is receiving the	20	accuracy.
21	proper amount of contributions from each	21	ARBITRATOR IRVINGS: I want to
22	contributing employer?	22	clarify. If we're talking about the
23	A The goal of the annual audit is to	23	distinction between what the purpose
24	be able to determine whether the financial	2.4	of the annual Fund audit is versus
25	statements present fairly the financial	25	what the purpose of an audit in an
	Page 910		Page 911
1	Page 910 ARBITRATION - VOLUME IV	1	Page 911 ARBITRATION - VOLUME IV
1 2		1 2	ARBITRATION - VOLUME IV
	ARBITRATION - VOLUME IV		ARBITRATION - VOLUME IV assets, total assets. So materiality was
2	ARBITRATION - VOLUME IV employer's contributions. MR. EATON: Understood. We're	2	ARBITRATION - VOLUME IV
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2 3 4	ARBITRATION - VOLUME IV employer's contributions. MR. EATON: Understood. We're talking about the annual Fund audit.	2 3 4	ARBITRATION - VOLUME IV assets, total assets. So materiality was probably a million dollars.
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		1	
	Page 912		Page 913
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	reports in particular because they were part	2	remember the details to the remittance
	of that annual audit?	3	reports themselves.
4	A Yes.	4	Q And is it your understanding that
5	Q And for The Times Pension	5	employees for The Times worked different
6	remittance reports, did they report shift	6	kinds of shifts?
	information at all on those reports?	7	A Yes.
8	A The Welfare Fund reports had the	8	Q And what were some of those types
9	shift information and that was also used for	9	of shifts?
	Pension.	10	A They were day shifts and night
11	Q My question is a little bit	11	shifts and weekend shifts.
12	different: On the Pension Fund remittance	12	Q Let me turn to Exhibit 48.
	reports, was there any information about	13	Have you ever seen this document?
	shifts on The New York Times remittance	14	A I don't recall. Something similar.
15	reports?	15	This one exactly, I don't remember.
16	A I don't recall seeing that.	16	Q And is it fair to say that that's a
17	Q And for the Times Welfare reports,	17	pension remittance report for The New York
18	that did include information about shifts;	18	Times?
	is that right?	19	A My recollection would be yes.
20	A It did.	20	Q And now let's turn to Exhibit 86.
21	Q And on those Welfare remittance	21	Let me know when you are there.
22	reports from The Times, did they	22	A Okay.
	differentiate the type of shift that was	23	Q The Bates Number is FUND-98 and the
	being reported?	24	cover e-mail is an e-mail from Todd Jackson
25	A I'm sorry. I really just don't	25	to Barbara dated June 9, 2011.
	3 3		·
	Page 914		Page 915
1	_	1	
1 2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV
2	ARBITRATION - VOLUME IV If I could direct your attention to	2	ARBITRATION - VOLUME IV A Oh, sorry. Yes.
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2 3 4	ARBITRATION - VOLUME IV If I could direct your attention to beginning on the second page. And the Subject from the first page	2 3 4	ARBITRATION - VOLUME IV A Oh, sorry. Yes. Q Are you familiar with what the New York Times or the NYT Shared Services Center
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	Page 916	Page 917
1 ARBITRATION - VOLUM	ME IV 1	ARBITRATION - VOLUME IV
Do you see that?	2	ARBITRATOR IRVINGS: Ron, do
3 A Yes.	3	you have any dispute about what this
4 Q Does this e-mail give yo		s?
5 comfort that this is a New York		MR. RICHMAN: I don't have any
6 Welfare remittance report?		dispute about what it is, but it's
A Well, that's what the cov		really the issue with would the
8 e-mail says. I can't swear that t		vitness have been able to
9 attached to it.	9	MR. EATON: Ron, let's look at
Q Okay. Fair enough.	10 h	nis deposition on Page 56.
The actual attachment wa		MR. RICHMAN: Well, are you
in native format, but this comes		sking me a question or
¹³ Fund.	13	MR. EATON: I was just
Didn't you testify on direct	t that	directing you to where I was.
you were familiar with the rem		MR. RICHMAN: Okay.
16 reports?	16	MR. EATON: And for the record,
MR. RICHMAN: Object	ion. 17 I	'm looking at his deposition on
¹⁸ A Generally, yes.		Page 56. And I'll ask it this way.
Q So generally speaking, w		IR. EATON:
type of report you were used to		Q Mr. Lewis, do you recall at your
The New York Times?		position being asked the following
A There were a lot of report		estion: "And was shift information in
The New York Times had and t		nt''
of acronyms and shorthand and		A Excuse me.
remember exactly what DELCO	DL is. 25	On Page 56, do you recall being
	Page 918	Page 919
¹ ARBITRATION - VOLUM	FIV 1	ARBITRATION - VOLUME IV
² asked the following question: "(ple that may be clearer.
would you have to look at the W		"Does it say weekday shift versus
4 reports in order to get the shift		day shift versus night or does it just
information to review The New		juote, shift?"
6 pension contributions?"		Answer: "My recollection is it
7 Answer: "Yes."		ays 'shifts.'"
8 A Yes, I recall that.		Question: "And when you look at
		omputer screen on the Fund database,
9 O So for you to get shift		
Q 50 for you to get sinit		that differentiate between the types of
information, you would not look		that differentiate between the types of ?"
information, you would not look	ook at the 11 shifts	~ I
information, you would not look pension reports but you would lo	ook at the 11 shifts at fair to 12	?"
information, you would not look pension reports but you would lo Welfare remittance reports; is th	ook at the at fair to 11 shifts 12 13 differ	?" Answer: "I don't recall it
information, you would not look pension reports but you would low Welfare remittance reports; is the say?	ook at the at fair to 11 shifts 12 13 differ 14 15 did yo	?" Answer: "I don't recall it rentiating." Do you recall those questions and ou give those answers?
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Page 921 Page 920 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 of shift dollars that would be contributed night, The Times according to your 3 3 understanding would make three different from the high to the low in terms of what 4 4 levels of Pension contribution based on the dollar amount would have been. And we 5 5 those different types of shifts; is that would compare the totals that were 6 6 contributed and see if it fell within the right? 7 7 A Yes. range. 8 8 Technically, the contribution was a So if it was between the high and 9 9 percentage of compensation, so if the low range, then that was accepted during 10 10 compensation changed slightly depending on the audit process. 11 11 the day, then the contribution would change Okay. So, but that information was 12 12 in the same pro rata way. Because not based on any knowledge of the number of 13 13 day shifts worked by the work force, versus percentage was the same, 8 percent. 14 14 the number of night shifts worked by Now, for the audit, if you did not 15 15 workforce; is that right? know the type of shifts that the employees 16 16 worked, how did you ensure that The Times Α Yes, that's right. 17 17 And so explain to me how the sent in the proper Pension contribution for 0 18 those employees? 18 process that you followed would actually MR. RICHMAN: Can we just --19 19 ensure that The Times contributed the amount 20 talking about the annual audit. 20 that they were supposed to contribute for 21 21 the Pension Fund? MR. EATON: Talking about the 22 22 MR. RICHMAN: Objection. annual audit. 23 23 That's not the testimony here. This MR. RICHMAN: Okay. Just 24 making sure. 24 is an issue of materiality because 25 A We used just an analysis of a range 25 we're dealing with the annual audit. Page 922 Page 923 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 MR. EATON: It would be helpful Q Did you ever conduct a payroll 3 3 if the witness can provide the audit of The New York Times? 4 4 We did. answer. Α 5 5 ARBITRATOR IRVINGS: Absolutely, And when you conducted a payroll O 6 6 but I think this does go to the audit of The New York Times, did you have 7 7 question about whether we're talking the information that broke out the types of 8 8 about what they determined for the shifts worked? 9 9 annual audit as opposed to what they A Yes, because we saw what the 10 10 determined where they're auditing the individual was earning, and the earnings 11 contributions of an employer. 11 corresponded to the shifts. 12 12 MR. EATON: And I'll get there. That wasn't my question. I think I 13 ARBITRATOR IRVINGS: That's 13 asked a slightly different question. 14 Did you have data or information 14 fine. 15 15 from The Times about what type of shift the Then go ahead, please answer the 16 16 employees worked when you conducted a question. 17 17 Our procedures during the annual payroll audit of The Times? 18 18 audit was an approximation. It was a range. MR. RICHMAN: Objection. Asked 19 19 And so did that procedure or that and answered. 20 20 standard that you wanted to meet change at ARBITRATOR IRVINGS: No. I 21 21 all when conducting a payroll audit for an don't think so. 22 employer versus an annual audit for the 22 Go ahead. 23 23 Fund? A I believe we had the information we 24 24 Yes, because the records were needed to do that, because we saw the pay 25 25 different, were more detailed. that was earned during the period and the

	Page 924		Page 925
1	-	1	
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	earnings for the period corresponded to the	2	difference between the standard for the
3	shifts.	3	Pension Fund audit versus a payroll audit.
4	Q Is it your understanding that the	4	Can you quantify in any way what
5	shift information for Welfare reports on	5	the difference is in materiality in those
6	The New York Times were concurrent with the	6	two different audits?
7	shifts worked for employees receiving	7	A The annual audit of The New York
8	pension contributions?	8	Times was just one of a number of
9	A Yes.	9	contributing employers.
10	Q And what is the basis of that	10	A payroll audit is for that
11	understanding?	11	employer in particular, so there was more
12	A It's part of the contribution	12	specificity when dealing with the payroll
13	process. I understood it from discussions	13	audit than dealing with the annual audit of
14	with the Fund office.	14	the Fund.
15	Q Did you ever get that understanding	15	Q Let me clarify the question a
16	based on any conversations with people from	16	little bit.
17	The New York Times?	17	I think you testified that for the
18	A I don't recall having that	18	annual audit of this Pension Fund, given its
19	conversation.	19	size, the materiality threshold was
20	Q Did you ever see any report from	20	approximately a million dollars; is that
21	The New York Times that had Pension	21	right?
22	contributions reported in a way that was not	22	A Yes.
23	a percent times a wage?	23	Q Can you tell me what the
24	A No.	24	materiality threshold for payroll audit of
25	Q Let's talk a little bit about the	25	The New York Times would be with respect to
	<u> </u>		
	Page 926		Page 927
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
1 2	ARBITRATION - VOLUME IV its contributions to the Pension Fund?	1 2	ARBITRATION - VOLUME IV A We were comparing from one to the
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Page 928 Page 929 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 contributing the proper amount when you did referring to as a self-audit, then I guess 3 the payroll audit of The Times? 3 I'm thinking they did that. 4 4 A We would look at the total payroll And you answered my next question. 5 5 And the conclusion was that they had for the period. We would look to the 6 6 factor, the 8 percent factor to see the underpaid; is that right? multiplication. We would look to see that 7 Α Yes. 8 8 the number of shifts were contributed for In your experience was it common 9 9 for contributing employers to self-report to that period. There was a maximum number of 10 10 the Pension Fund that they had underpaid? shifts per week. 11 No, that's not common. 11 We multiply and do the math and 12 12 come to a number and see if that was Let's look at Exhibit 50. 13 13 Take a second to review that. contributed. 14 14 Mr. Lewis, have you seen this Q And when you say you would multiply 15 and do the math, you would take the eligible 15 document before? 16 earnings and multiply it by the rate? 16 I have, yes. Α 17 17 And just for the record, the first Α Yes. 18 18 And just to confirm, that rate was page has two e-mails on it and it's Bates 19 19 8 percent: is that correct? Number WEISER-177. 20 20 Α Yes The first is an e-mail from you to 21 Did The New York Times ever conduct 21 Ivy Narissi on August 8, 2012 at 3:03 p.m. O 22 22 a self-audit, that you can recall? And the bottom e-mail is an e-mail 23 23 Well, I can recall them notifying from Morris Claffee to you on August 8, 2012 24 24 the Fund office that they undercontributed at 5:17 p.m. 25 at some point. If that's what you are 25 Do you see that? Page 930 Page 931 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 I want to focus on Column B where 3 3 And let's focus on the bottom it looks like we have deduction code, DELPEN 4 4 e-mail. Mr. Claffee writes, "Hello, Mitch, and DELWEL. 5 5 Per our conversation, please see above And then in Column D, looks like we 6 attachment for summary and details of 6 have dollar figures; is that right? 7 7 employer Deliverers' Pension and Welfare 8 8 contributions that were not funded due to And is this sort of a summary of O 9 9 setup issues. This issue was detected the results from the self-audit that 10 during self-audit of employer contributions. 10 The Times did? 11 These have been corrected in our payroll 11 Α Yes. 12 system, and we have implemented additional 12 So they ended up concluding that 13 13 controls to make sure that they are not they for DELPEN owed approximately \$62,000 14 missed going forward. Please review 14 and for DELWEL, approximately \$62,000; is 15 attachment and advise of any questions or 15 that right? 16 concerns." 16 Α Yes. 17 17 Do you recall receiving this e-mail Let's look at the next page, 18 from Mr. Claffee? 18 WEISER-179. 19 A I recall once I saw it, that makes 19 And Column B seems to be employee 20 sense that I would have received it. I 20 names. And then I want to focus on Columns 21 don't remember exactly at that time, but, 21 G, H and I with G being the earnings subject 22 22 ves. to deduction, H the deduction percent and I 23 And if you flip to the next page, 23 the calculated deduction. 24 there appears to be a spreadsheet that's 24 Do you see those? 25 WEISER-178, Bates Number. 25 Α Yes.

Dago 022	Dago 022
Page 932	Page 933
¹ ARBITRATION - VOLUME IV	1 ARBITRATION - VOLUME IV
² Q Is it your understanding that for	go to WEISER-221.
this self-audit process, The Times went	Are you there?
4 through and for the employees listed in	⁴ A Yes.
5 Column B wrote their earnings subject to	5 Q And Column B again is employee
6 deduction, multiplied it by 8 percent and	6 names, and then Columns G, H and I are the
then remitted a check based on the result of	same for, as we previously looked at
8 that math?	⁸ earnings, subject to deduction, deduction
9 A Yes.	9 percentages and calculated deduction.
Q So the remedy for the shortfall by	And if you just flip the page
The Times was to take earnings, multiply it	briefly, you'll see in Column K, this is for
by 8 percent and that was the result they	12 DELWEL.
needed to send you to top up for their	Do you see that?
previous shortfall; is that right?	14 A Yes.
A Yes, sent to the Fund.	Q Am I correct that The Times sort of
Q And then if you could flip to the	undertook this process to make up for the
next payable which is WEISER-180, Column K.	shortfall by taking Column G, which is the
18 It's just a continuation of the previous	earnings subject to deduction, multiplying
column, but you see it says DELPEN for the	it by 7.68 percent, and then the product of
20 deduction code? 21 A Ves	that calculation is what they remitted to
14 103.	make up for the shortfall?
7 Tha your understanding is that's	A 1 CS.
the rension deduction code, is that right:	as there any mention in these
11 103.	calculations of this process about shifts:
Q Let's go later in the document and	A No, there's not.
5 004	
Page 934	Page 935
Page 934	
1 ARBITRATION - VOLUME IV	¹ ARBITRATION - VOLUME IV
ARBITRATION - VOLUME IV Q Any mention of shift wage?	ARBITRATION - VOLUME IV Q Did you discuss first, did you
ARBITRATION - VOLUME IV Q Any mention of shift wage? A No.	ARBITRATION - VOLUME IV Q Did you discuss first, did you have any communication with Mr. Claffee as a
ARBITRATION - VOLUME IV Q Any mention of shift wage? A No. Q Any mention of shift rate?	ARBITRATION - VOLUME IV Only Did you discuss first, did you have any communication with Mr. Claffee as a result of this e-mail, that you can recall?
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	Page 936		Page 937
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	based on what we saw, made sense to us in	2	Q Do you recall him objecting in
3	that these individuals were not included in	3	any way to The Times conducting their
4		4	
5	the Fund reporting, the Fund's own internal	5	self-audit in this particular way?
	reporting of shifts and credit and any of		A No.
6	those things. They just were not listed.	6	Q You testified on your direct
7	So in that regard, being that these	7	examination about an audit you conducted of
8	individuals were here paid for during this	8	C & S.
9	period, then it made sense to us that	9	Do you recall that?
10	The Times was saying that they were in fact	10	A Yes, I do.
11	employees of The Times and NMDU members	11	Q And can you describe how that audit
12	didn't make sense.	12	came about?
13	Q Aside from sort of people not being	13	A I think I mentioned it earlier that
14	reported on the remittance reports, did the	14	C & S was closing and we were asked to
15	actual calculations make sense to you?	15	review their contribution rates and payments
16	A They did.	16	for a period prior to their closing.
17	Q And did you discuss the actual	17	Q Let's look at Exhibit 45.
18	calculations with Mr. Schwartz?	18	A Okay.
19	A I don't recall specifically. I	19	Q On the page that's Bates labeled
20	would say we probably had a conversation	20	FUND-1250, if you go there.
21	about it.	21	Under Paragraph B, it says,
22	Q Did he ask you any questions to the	22	"Mr. Lewis reviewed the final results of the
23	effect of where is the information about	23	payroll audit of the City & Suburban
24	shifts?	24	Delivery Systems, Inc. as detailed in the
25	A I don't recall him saying that.	25	June 14, 2010 memorandum attached hereto as
	<i>y e</i>		,
	Page 938		Page 939
1	Page 938 ARBITRATION - VOLUME IV	1	Page 939 ARBITRATION - VOLUME IV
1 2	ARBITRATION - VOLUME IV	1 2	
	ARBITRATION - VOLUME IV Exhibit H. As noted, a settlement payment		ARBITRATION - VOLUME IV Q And when you presented information
2	ARBITRATION - VOLUME IV Exhibit H. As noted, a settlement payment of \$343,289 was made on June 24, 2010. A	2	ARBITRATION - VOLUME IV Q And when you presented information at one of these trustee meetings, do you
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2 3 4 5	ARBITRATION - VOLUME IV Exhibit H. As noted, a settlement payment of \$343,289 was made on June 24, 2010. A copy of the check is also attached as part of Exhibit H." So you attended this trustee	2 3 4 5	ARBITRATION - VOLUME IV Q And when you presented information at one of these trustee meetings, do you walk up to the head of the table and stand and present, or do you just remain seated
2 3 4 5 6	ARBITRATION - VOLUME IV Exhibit H. As noted, a settlement payment of \$343,289 was made on June 24, 2010. A copy of the check is also attached as part of Exhibit H."	2 3 4 5 6	ARBITRATION - VOLUME IV Q And when you presented information at one of these trustee meetings, do you walk up to the head of the table and stand and present, or do you just remain seated and talk to the trustees and those present?
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Page 940 Page 941 1 1 ARBITRATION - VOLUME IV ARBITRATION - VOLUME IV 2 2 A I do. to the CBA ..." 3 3 O So your task was to ensure that the Do you see that? 4 4 contributions comported with the Collective Yes. Α 5 5 Bargaining Agreement; is that right? It says, "Due to the CBA, effective 6 6 A Yes. date of March 31, 2006, Weiser requested the 7 7 recalculation of contributions for the O Let's look at your first finding 8 8 that's at the bottom of 1251. period April 1, 2006 through December 31, 9 9 Tell me if I accurately summarized 2006. Thus each period was recalculated for 10 10 this: That The Times had agreed to a total apprentice hours times hourly rate, 11 11 contribute based on hours for apprentices and all regulars were recalculated 12 multiplying total eligible earnings times 12 only, but in fact they were contributing 13 13 based on hours for employees other than applicable pension percent." 14 14 Do you see that? apprentices; is that right? 15 15 A Yes. Α Yes. 16 16 And you note in the last sentence O I want to focus on the last half of 17 17 of Page 1251, "The CBA stated that only that sentence that begins "All regulars were 18 18 recalculated " apprentices were to be paid using the hourly 19 19 Okav. rate." Α 20 Is that right? 20 Q What do you mean by that? 21 21 That only the apprentices, that Yes. A Α 22 22 group was based on that particular rate; If you turn to the next page, 0 23 23 that others should have been based on their FUND-1252. 24 For the results, let me direct your 24 work day rates. 25 25 Okay. So I'm trying to figure out attention to the sentence that begins "Due Page 942 Page 943 1 ARBITRATION - VOLUME IV 1 ARBITRATION - VOLUME IV 2 2 how The Times remedied this sort of Α 3 3 inaccurate contribution they were making. I believe you testified on your 4 4 When it says, "Regulars were direct that The Times went back and recalculated by multiplying total eligible 5 5 recalculated based on the shifts -- the 6 6 earnings times applicable pension percent," wages earned per shift. 7 7 does that mean that their earnings were Do you recall that? 8 8 multiplied by 8 percent? I do. Α 9 9 Their eligible earnings, yes, based Is it still your testimony that 10 10 on maximum shifts. Because they could have they looked at the type of shift worked, or 11 11 worked six days or seven days, they don't did they look at total eligible earnings and 12 12 contribute on all of those days. multiply it by 8 percent? 13 13 So it wouldn't necessarily have Well, the type of shifts correspond 14 14 been a hundred percent of the earnings. The to the earnings. So they basically looked 15 earnings would have been limited to five 15 at the earnings but the earnings are 16 16 comparative. That is the shift. Because days. 17 17 So are total eligible earnings the earnings are specific to a particular 18 18 synonomous with wages? type of shift, so it is earnings, but it's 19 19 Yes. also the type of day that the person works 20 20 O So for The Times to remedy this or night. 21 21 shortfall, they took total eligible earnings So it's your understanding that 22 and multiplied it by the applicable Pension 22 8 percent of eligible wages or eligible 23 23 percent. earnings means the same thing as 8 percent 24 24 Was the applicable Pension percent of the shift rate that was worked? 25 25 8 percent? Yes. Α

	Page 944		Daga 0/15
			Page 945
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	Q Is it your understanding that	2	understanding that they took 8 percent of
3	contributions are made based on shifts that	3	the wages paid and also 8 percent of the
4	are not worked?	4	nonworked shift pay, such as vacation pay
5	A Some.	5	and military pay and foreman salary, those
6	Q And what's your understanding of	6	things we just listed?
7	the types of contributions that are made	7	A Yes, except those nonworked days
8	based on shifts not worked?	8	were I believe not restricted to just five
9	A Vacation, sick, Workers' Comp, I	9	days.
10 11	believe.	11	If an individual was paid for
12	Q And would military pay be another	12	ten days of vacation, then the full
13	one?	13	contribution was made.
14	A That, I don't recall. I'm sorry, I	14	Q Is it your understanding that
15	don't recall.	15	foremen were paid per shift or based on a
16	Q Do you know how foremen are paid? Strike that.	16	salary?
17		17	A I don't really have a detailed
18	Do you know the basis upon which foremen get Pension contributions made on	18	knowledge of the foremen's compensation process.
19	their behalf?	19	Q Okay. Let's go to Paragraph B on
20	A I believe it was their pay times	20	FUND-1252.
21	8 percent.	21	It says, "The rate increases were
22	Q So is it still your	22	made on March 31, 2008. The calculation of
23	understanding strike that.	23	the hourly rate was not updated."
24	When The Times corrected their	24	Do you see that?
25	discrepancy under Finding 1, is it your	25	A I do.
	discrepancy under 1 maing 1, is it your		11 1 40.
	Page 946		Page 947
1	-	1	
1 2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV
	ARBITRATION - VOLUME IV Q And the results I want to focus		ARBITRATION - VOLUME IV Q And for Finding C, Paragraph C, the
2	ARBITRATION - VOLUME IV Q And the results I want to focus your attention on the sentence that starts	2	ARBITRATION - VOLUME IV Q And for Finding C, Paragraph C, the finding was that the diversion percentages
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2 3 4 5 6 7	ARBITRATION - VOLUME IV Q And the results I want to focus your attention on the sentence that starts "For the regulars" Do you see that? A I'm sorry? Q The sentence begins "The	2 3 4 5 6 7	ARBITRATION - VOLUME IV Q And for Finding C, Paragraph C, the finding was that the diversion percentages were not updated, meaning diversion from the Pension Fund to the Welfare Fund; is that right? A Yes, that's right.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME IV Q And the results I want to focus your attention on the sentence that starts "For the regulars" Do you see that? A I'm sorry? Q The sentence begins "The recalculation by The Times" A Sorry. I'm off. Q Understood. Fair enough. Let me direct you. We're under Paragraph B, paragraph that begins "Result" A Yes, "The recalculation by the Fund," yes. Q "The recalculation by The Times was based on regulars on total earnings. Therefore, the rate increase is automatically included in updated calculation." So similar to our last sort of section that we discussed, is it your understanding that The Times to make up for their shortfall took total earnings and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME IV Q And for Finding C, Paragraph C, the finding was that the diversion percentages were not updated, meaning diversion from the Pension Fund to the Welfare Fund; is that right? A Yes, that's right. Q And the remedy here was and let me direct you to the sentence that begins "For the regulars" "For the regulars, total earnings were multiplied by 6 percent for the periods 2006, 2007 and January 2008, 6.5 percent for February 2008 through June 2008, and 7 percent for July 2008 through December 2008. No exceptions were noted." Do you see that? A Yes. Q So again, The Times' remedy was wages times a percent? A Yes. Q In any of these findings or results, are shifts mentioned with respect
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME IV Q And the results I want to focus your attention on the sentence that starts "For the regulars" Do you see that? A I'm sorry? Q The sentence begins "The recalculation by The Times" A Sorry. I'm off. Q Understood. Fair enough. Let me direct you. We're under Paragraph B, paragraph that begins "Result" A Yes, "The recalculation by the Fund," yes. Q "The recalculation by The Times was based on regulars on total earnings. Therefore, the rate increase is automatically included in updated calculation." So similar to our last sort of section that we discussed, is it your understanding that The Times to make up for	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME IV Q And for Finding C, Paragraph C, the finding was that the diversion percentages were not updated, meaning diversion from the Pension Fund to the Welfare Fund; is that right? A Yes, that's right. Q And the remedy here was and let me direct you to the sentence that begins "For the regulars" "For the regulars, total earnings were multiplied by 6 percent for the periods 2006, 2007 and January 2008, 6.5 percent for February 2008 through June 2008, and 7 percent for July 2008 through December 2008. No exceptions were noted." Do you see that? A Yes. Q So again, The Times' remedy was wages times a percent? A Yes. Q In any of these findings or

	Page 948		Page 949
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	shifts.	2	five-minute break.
3	Q Is wage rate mentioned with respect	3	ARBITRATOR IRVINGS: Sure.
4	to regulars anywhere?	4	(A brief recess was
5	A The term exactly "wage rate"? It	5	taken.)
6	says here "earnings, wages."	6	BY MR. EATON:
7	"Wage rate?" No, I don't see that.	7	Q Mr. Lewis, if I could direct your
8	Q Do you see "shift rate" anywhere?	8	attention to Exhibit 75, please. It's in
9	A No.	9	the blue binder. And specifically to Bates
10	Q And you presented these findings to	10	Number FUND-1611. It's the Schedule R for
11 12	the trustees; is that correct?	11	that Form 5500.
13	A Yes.	13	And I believe you testified on
14	Q Did any of the trustees ask a	14	direct examination that you filled out the
15	question to the effect of: "Why doesn't it say shift rate"?	15	Schedule R; is that right? A We did.
16	A No.	16	
17	Q Did they ask any questions	17	Q "We" meaning? A The firm.
18	strike that.	18	Q And on what basis did you fill this
19	A No.	19	out?
20	Q Did they ask any questions about	20	Strike that. Let me ask a better
21	your conclusions or the results that	21	question.
22	describe the process by which The Times had	22	Did you review the Collective
23	to make up for the shortfall?	23	Bargaining Agreement for The Times before
24	A No, I don't recall.	24	you filled out Section 13E?
25	MR. EATON: Can we take about a	25	A No.
	Page 950		Page 951
1		1	ARBITRATION - VOLUME IV
2	ARBITRATION - VOLUME IV	2	it's based on wages related to shifts rather
3	Q Where did you get the information from to fill out Section 13E?	3	than hourly, weekly or unit of production.
4	A It was our understanding of what	4	Q So it's your understanding that the
5	the rate is for contribution.	5	base unit measure is not shifts; is that
6	Q All right. And is it your	6	right?
7	understanding that a base unit measure	7	A No, I said it is. I said it's not
8	equals a contribution base unit?	8	hourly, weekly or unit or production. It's
9	A I have not used the term before.	9	based on daily wage rates which are based on
10	I'm not really familiar with it.	10	shifts.
11	Q Used which term?	11	So there's no term here that says
12	A "Base unit contribution."	12	"shifts" so I couldn't check that box.
13	Q Let's clarify.	13	Q Understood.
14	The term used here is "base unit	14	My question is: Is it your
15	measure."	15	understanding that 8 percent of daily wage
16	A Right. Okay.	16	rates means the same thing as shifts?
17	Q Do you have an understanding of	17	A Yes.
18	what that term means?	18	MR. EATON: No further
19	A I don't have a technical	19	questions.
20	definition, no.	20	FURTHER DIRECT EXAMINATION BY MR. RICHMAN:
21	Q So then on what basis did you check	21	Q Let me show you Exhibit 50 not
22	the box "Other" and write "8 percent of	22	that I show can you turn to Exhibit 50?
23 24	daily wage rates"?	23	A Okay.
25	A Because we know that the	24	Q All set?
23	contribution percentage is 8 percent and	25	A Yes.
		1	

	Page 952		Page 953
1	ARBITRATION - VOLUME IV	1	ARBITRATION - VOLUME IV
2	Q So you see this is an e-mail that	2	G-R-U-O-L.
3	you had the top one is an e-mail you had	3	Do you see him?
4	with Ms. Narissi?	4	A Yes.
5	A Yes.	5	Q And you see that for the week
6	Q And we went through on	6	6-4-2011, I'm under D?
7	cross-examination a document that is part of	7	A Yes.
8	Exhibit 50.	8	Q That would be column?
9	And what I would like you to do is	9	A Correct.
10	turn to page WEISER-221.	10	Q That it has 288.51.
11	You got that?	11	A Yes.
12	A Yes.	12	Q Do you see that?
13	Q And so what I would like to focus	13	A Yes.
14	on, you see on the left-hand side there are	14	Q And do you know and that's a
15	numbers starting with 966 and going to 1011?	15	dollar amount, correct?
16	A Yes.	16	A Yes.
17	Q I want to focus on the Column 1003.	17	Q And do you know what that dollar
18	Do you see that?	18	number represents?
19	A Yes.	19	A His earnings.
20	MR. EATON: You are talking	20	Q Now, let me show you. I just want
21	about Row 1003?	21	you to focus on the fact that your e-mail
22	MR. RICHMAN: You're right,	22	with Ms. Narissi is dated 8-8-2012.
23	sorry.	23	A Yes.
24	A I knew what you meant.	24	Q So let's take a look at Exhibit 86.
25	Q And I'm looking at Gregory Gruol,	25	If you look at the first page of Exhibit 86,
	Page 954		Page 955
1	A D D VIII D A III VA VA VA VIII VA VA VIII VA		
		1	ADDITDATION VOLUME IV
2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV
2	and it's Bates Number 98.		You see him?
	and it's Bates Number 98. Do you see that?	2	You see him? A Yes.
3	and it's Bates Number 98. Do you see that? A Yes, I do.	2	You see him? A Yes. Q And you see the Base, it says "1"
3 4	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd	2 3 4	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"?
3 4 5	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times.	2 3 4 5	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes.
3 4 5 6	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that?	2 3 4 5 6	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is?
3 4 5 6 7	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do.	2 3 4 5 6 7	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think
3 4 5 6 7 8	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two	2 3 4 5 6 7 8	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts.
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3 4 5 6 7 8 9	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two	2 3 4 5 6 7 8 9	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts.
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3 4 5 6 7 8 9 10 11	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara	2 3 4 5 6 7 8 9 10 11 12	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes.
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3 4 5 6 7 8 9 10 11 12 13 14	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is	2 3 4 5 6 7 8 9 10 11 12 13 14	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373?
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3 4 5 6 7 8 9 10 11 12 13 14 15 16	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is involved in the bookkeeping and the accounting.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373? A Yes, I do. Q And you see the factor 3-31-2011? A Yes.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is involved in the bookkeeping and the accounting. Q And this actually says "Barbara A."	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373? A Yes, I do. Q And you see the factor 3-31-2011? A Yes. Q And if you look across the Day
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is involved in the bookkeeping and the accounting. Q And this actually says "Barbara A." Do you know who Barbara A. is?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373? A Yes, I do. Q And you see the factor 3-31-2011? A Yes. Q And if you look across the Day Rate, that day rate is 288.52?
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is involved in the bookkeeping and the accounting. Q And this actually says "Barbara A." Do you know who Barbara A. is? A Her last name is Albergo.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373? A Yes, I do. Q And you see the factor 3-31-2011? A Yes. Q And if you look across the Day Rate, that day rate is 288.52? A Yes.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is involved in the bookkeeping and the accounting. Q And this actually says "Barbara A." Do you know who Barbara A. is? A Her last name is Albergo. Q If you turn to there's not a	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373? A Yes, I do. Q And you see the factor 3-31-2011? A Yes. Q And if you look across the Day Rate, that day rate is 288.52? A Yes. Q Now let's go back to Mr. Gruol in
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is involved in the bookkeeping and the accounting. Q And this actually says "Barbara A." Do you know who Barbara A. is? A Her last name is Albergo. Q If you turn to there's not a page number but it is the third page, and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373? A Yes, I do. Q And you see the factor 3-31-2011? A Yes. Q And if you look across the Day Rate, that day rate is 288.52? A Yes. Q Now let's go back to Mr. Gruol in Exhibit 50.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	and it's Bates Number 98. Do you see that? A Yes, I do. Q And that's an e-mail from Todd Jackson at The New York Times. Do you see that? A I do. Q And that is sent more than two months about two months earlier on June 9th actually, a year and two months earlier, on June 9, 2011 to Barbara at Publishers NMDU Welfare Fund. And who is the Barbara in that? A Barbara is a Fund employee who is involved in the bookkeeping and the accounting. Q And this actually says "Barbara A." Do you know who Barbara A. is? A Her last name is Albergo. Q If you turn to there's not a page number but it is the third page, and you look at Mr. Gruol who is about	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	You see him? A Yes. Q And you see the Base, it says "1" under the column Base. Says "1"? A Yes. Q Do you know what that is? A Specifically, I don't. I think it's shifts. Q Let me show you Exhibit 42. See if we can have all these out together. A Yes. Q You see exhibits Bates Number 2373? A Yes, I do. Q And you see the factor 3-31-2011? A Yes. Q And if you look across the Day Rate, that day rate is 288.52? A Yes. Q Now let's go back to Mr. Gruol in Exhibit 50. A Okay.

	Page 956		Page 957
1	ARBITRATION - VOLUME IV	1	
2	Q Putting all these together, do you	1 2	ARBITRATION - VOLUME IV
3	have any understanding as to what the 288.51	3	ADDITD ATOD IDVINGS. E114
4	is?	4	ARBITRATOR IRVINGS: Excellent.
5	A This is his earnings for that	5	Thank you.
6	one working that one period of time which	6	(Wharaynan the presentings were
7	is a shift for that day rate.	7	(Whereupon, the proceedings were adjourned at 4:28 p.m.)
8	MR. RICHMAN: No further	8	adjourned at 4.28 p.m.)
9	questions.	9	
10	MR. EATON: Just one follow-up.	10	
11	FURTHER CROSS EXAMINATION BY MR. EATON:	11	
12	Q If Mr. Richman hadn't picked an	12	
13	example that had one shift in it but	13	
14	multiple, could you do the math the same way	14	
15	if the employee worked a day shift and two	15	
16	night shifts, for example?	16	
17	A Without having further information,	17	
18	it would be difficult to do.	18	
19	MR. EATON: No further	19	
20	questions. Done for now.	20	
21	•	21	
22	(Continued on next page.)	22	
23		23	
24		24	
25		25	
1		1	_
1 2	ARBITRATION - VOLUME IV	1 2	ARBITRATION - VOLUME IV C E R T I F I C A T E
3	INDEX	3	STATE OF NEW YORK)
4	PAGE		: SS.
5	WITNESS: ETHAN EMANUEL KRA Cross Examination by Mr. Miller 783	4	COUNTY OF NEW YORK)
6	Cross Examination by Mr. Miller 783	5	I, BARBARA R. ZELTMAN, Shorthand
7	WITNESS: MICHELL LEWIS	6	Reporter and Notary Public, within and
8	Direct Examination by Mr. Richman 860	7 8	for the State of New York, do hereby
9	Cross Examination by Mr. Eaton 907	9	certify: That this transcript is a true
10	Further Direct Examination by Mr. Richman 951	10	record of the proceedings had.
11	Further Cross Examination by Mr. Eaton 956	11	I further certify that I am not
12	1 drain Cross Examination by 1911. Eaton 930	12	related to any of the parties to this
13		13	action by blood or marriage, and that I
14		14	am in no way interested in the outcome of
15		15 16	this matter.
16		17	IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of April, 2015.
17		18	see my nama ans tur day or Apin, 2013.
18		19	
19		20	BARBARA R. ZELTMAN
20 21			Court Reporter and Notary Public
		21	•
2.2		22	
22		2.2	
23		23	
		23 24 25	

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Page 960
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    THE ARBITRATION TRIBUNALS OF THE
    AMERICAN ARBITRATION ASSOCIATION
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6
    In the Matter of the Arbitration between:
7
8
    THE NEW YORK TIMES COMPANY,
9
                               Petitioner,
10
                    VS.
11
    NEWSPAPER AND MAIL DELIVERERS'-PUBLISHERS'
12
    PENSION FUND
13
                               Respondent.
     -----x
14
15
    No. 01-14-0000-1433
16
17
18
           PROCEEDINGS AT ARBITRATION
19
           BEFORE MARK IRVINGS, ESQ.,
20
                   ARBITRATOR
21
                    VOLUME V
22
23
24
    Reported by: David Henry
25
    JOB NO. 97105
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Page 961	Page 962
September 17, 2015 September 17, 2015 9:30 a.m. Continued Proceedings at Arbitration (Volume V), before Mark Irvings, Esq., Arbitrator, held at the offices of the American Arbitration Association, 120 Broadway, New York, New York. New York.	A P P E A R A N C E S: JONES DAY Attorneys for the Petitioner 51 Louisiana Avenue, N.W. Washington, DC 20001 BY: EVAN MILLER, ESQ. AND: YAAKOV ROTH, ESQ. AND: MIGUEL EATON, ESQ. SCHULTE ROTH & ZABEL Attorneys for Respondent 919 Third Avenue New York, New York 10022 BY: RONALD RICHMAN, ESQ. AND: MAX GARFIELD, ESQ. AND: ADAM GARTNER, ESQ. ALSO PRESENT: ANDREW GUTTERMAN, ESQ. The New York Times TOM BENTVENA ANNE KOSKI, ESQ. The Segal Company (p.m. session)
Hayes - Direct TERRY HAYES, recalled as a witness, having previously been duly sworn, was further examined and testified as follows: DIRECT EXAMINATION BY MR. MILLER: Q. Mr. Hayes, welcome back. You testified in these proceedings back in February, and we've called you back to testify specifically about the subject of what occurred at meetings of the board of trustees and to ask you about minutes from those meetings and various exhibits to those minutes. Those are the only matters we'll be asking you about today. I'd like to start though by asking you to refresh our respective memories about certain aspects of your February testimony to lay the foundation for the new questioning. MR. RICHMAN: Do we really need to do this? MR. MILLER: It's just a couple of I think useful foundational questions, and I do think it will make	Hayes - Direct the documents go more quickly. Q. Have you recently reviewed your February testimony? A. Yes, I have. Q. And what was your testimony about your understanding between 2008 and the time that the Fund assessed partial withdrawal liability in September, 2013 about the relevant measure for the 70 percent decline test for partial withdrawal liability? A. Yes, during that period of time the measurement was a percentage of wages. Q. Okay, alright, with those preliminaries, the documents we'll discuss this morning are contained in the yellow binder, so why don't you open that now. Let me turn your attention initially to Exhibit 125. And Mr. Hayes, can you briefly summarize and identify these materials? A. The first page is the agenda that lists the items that are going to be discussed at the meeting. The page after

	Page 965	Page 96	6
1	Hayes - Direct	¹ Hayes - Direct	
2	that are the actual minutes from that	2 A. Okay.	
3	meeting.	Q. I'm not going to ask you any	
4	Q. And that meeting took place on	specific questions about the letter. Just	
5	July 25, 2007, is that right?	5 generally for foundational purposes, why	
6	A. That's correct.	don't you tell us what this letter is	
7	Q. Why don't you turn your attention	about.	
8	to the first page of the agenda and the	8 A. This letter was from Segal who	
9	first item on the agenda that day, and why	9 was the actuary for the Fund explaining to	
10	don't you explain quickly what that first	us that due to the new rules associated	
11	item is.	with the Pension Protection Act, that there	
12	A. Yeah, the first item basically	with the religion recently rick, that there were going to be changes in funding.	
13	announces me as a new publisher trustee	Q. And during your service on the	
14	replacing Bob Nusspickel, who was the	board of trustees, how much attention did	
15	previous trustee for the publishers.	the board pay to the Pension Protection Act	t l
16	Q. So was this your first meeting of	and its rules?	·
17	the board of trustees for the NMDU Fund?	A. We paid a lot of attention to	
18	A. Yes, it was.	that. It was brand new and legislation was	
19	Q. Now let's turn to the exhibit to	occurring as time went on.	
20	these minutes which I believe begins at	Q. And roughly how many meetings di	id
21	page 3311, that's on the bottom right.	the board have over the course of years in	
22	It's also called Exhibit I to the minutes.	which it discussed Pension Protection Act	
23	A. Yes.	issues?	
24	Q. Take a look at the exhibit to	A. We discussed it at virtually	
25	these minutes for a moment.	every meeting and there are special	
	Page 967	Page 96	8
1	-		8
1 2	Hayes - Direct	¹ Hayes - Direct	8
	Hayes - Direct meetings in which we had discussions about	Hayes - Direct really revolved around the Pension	8
2	Hayes - Direct meetings in which we had discussions about it.	Hayes - Direct really revolved around the Pension Protection Act, you know, funding	
2	Hayes - Direct meetings in which we had discussions about it. Q. During your time on the board of	Hayes - Direct really revolved around the Pension Protection Act, you know, funding improvement plans, the zoning and how the	
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Direct meetings in which we had discussions about it. Q. During your time on the board of trustees, how would you compare the time that the trustee spent on Pension Protection Act matters versus the time the board spent on withdrawal liability matters? A. We spent a lot of time on the Pension Protection Act and virtually no time on withdrawal liability. Q. And in connection with Pension Protection Act matters, who guided the trustees with respect to those matters? A. Segal was the actuary through John Urbank and Rosana. Q. And Rosana? A. Egan, sorry. Q. And of the time that the trustees spent at its meetings hearing from Segal,	Hayes - Direct really revolved around the Pension Protection Act, you know, funding improvement plans, the zoning and how the zones were calculated and identified. So we spent a lot of time with them on that. Q. Okay, why don't you turn your attention now to Exhibit 126, which are meeting of materials and minutes for September 20, 2007 board meeting. A. Yes, I see that. Q. And why don't you take a look at the first page of those minutes, which is 3086, again September 20, 2007. A. I have it. Q. Mr. Hayes, do you remember attending this meeting on September 20, 2007? A. While I don't specifically remember attending, it says I was here. I have no reason to think that I wasn't. Q. Alright, let me draw your	
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Page 970 Page 969 1 1 Hayes - Direct Hayes - Direct 2 2 Q. And at the top of page 5 there is Q. And so in connection with the 3 3 a bullet point that talks about Pension references to a 2 percent and a 1 percent 4 4 Fund diversion of two percent being reduced and a 1.5 percent on page 5, what are those 5 5 to one percent. Do you see that? percentages of? 6 6 A. Yes, I do. A. Those are percentages of wages. 7 7 Q. And there is a similar reference Q. During your time on the board of 8 8 trustees, did the subject of pension to diversion in a bullet that's right under 9 9 this little redacted box. Do you see that contribution diversions frequently come up? 10 10 as well? A. Yes. 11 11 A. Yes, I do. O. And when the issue of diversions 12 12 Q. And then on the next page, page were discussed, how were the diversion 13 13 6, there is also mention of diversion in amounts typically expressed? 14 14 paragraph four as part of a trustee motion. A. The diversion amounts were 15 15 Do you see that? typically expressed in dollars and wages. 16 A. Yes, I do. 16 Q. Let me draw your attention back 17 17 Q. What is your understanding of the to page 5 of the minutes, and there is a 18 18 Pension Fund diversion? bullet right about the middle of the page 19 19 A. The Pension Fund diversion that begins, if the sixers' contributions, 20 20 occurred before I joined the trustee board, do you see that? 21 21 but it was the diversion of up to two A. Yes, I do. 22 percent of the wages associated with the 22 O. And you see at the end of, or the 23 23 Pension Fund contribution that was second half of that sentence in the bullet 24 2.4 available for the union to divert to the point, it talks about guaranties to the 25 25 Welfare Fund through a possible increase in Welfare Fund. Page 971 Page 972 1 1 Hayes - Direct Hayes - Direct 2 2 the employees' shift contribution, do you the minutes, that's Fund number 3094, and 3 3 see that? toward the middle of the page there is a 4 4 discussion that begins under the heading A. Yes, I do. 5 5 Q. So that does mention shift Consultants' Report, do you see that? 6 6 contributions. What is that a reference A. Yes, I do. 7 7 Q. And the consultants in this to? 8 8 A. That is a reference to the regard would be whom? 9 9 employees' per shift contribution to the A. That would be Mr. Urbank and 10 10 Welfare Fund. Ms. Egan. 11 11 Q. Alright, let's turn our attention Q. Let me draw your attention 12 12 now to Exhibit 127. And those are agenda specifically to a sentence just about in 13 13 meeting materials for a December 19, 2007 the middle of that paragraph. It begins 14 meeting. 14 with the word contributions, contributions 15 15 for the year beginning. Why don't you read A. Yes, I see that. 16 16 Q. Okay. And let's begin drawing that sentence to yourself. 17 17 your attention to page 1 and the discussion A. Yes, sir. 18 18 of who was present. Q. And there is a reference in that 19 19 A. I see that. sentence to projected contributions, quote, 20 Q. And did you attend this meeting? 20 reflecting the contribution reallocation to 21 21 A. Again, I don't have a specific the Welfare Fund being reduced from 2 22 percent to 1.5 percent, do you see that? 22 recollection, but the minutes state I was 23 23 there so there's no reason for me to think A. Yes, I do. 24 24 I wasn't. O. And is that a continuation of the 25 Q. And now let's turn to page 2 of 25 discussion on diversion and reallocation

	Page 973		Page 974
1	Hayes - Direct	1	Hayes - Direct
2		2	A. We talked about the zones ad
3	from the prior meeting that we just discussed?	3	nauseam during the period of time.
4	A. Yes, it is.	4	Q. So often?
5	Q. And that contribution	5	`
6	reallocation that's discussed in this	6	A. Yes, very often.
7	paragraph, the references to percentages,	7	Q. And did Segal propose to help the trustees project what zone the fund would
8		8	be in in the future?
9	those are again a percentage of what?	9	MR. RICHMAN: Can we not lead?
10	A. Percentage of wages.	10	
11	Q. All right, let's move to the next	11	THE ARBITRATOR: I mean, I've
12	page, page three. And why don't you	12	let you lead the whole time, but at
13	quickly if you can review the first two	13	some point MR. MILLER: I understand.
14	paragraphs.	14	
15	A. Yes, sir.	15	Q. Did there come a time in which
16	Q. Okay, and you'll see in those	16	Segal made proposals to the trustees in
17	paragraphs that there is a mention of zone	17	connection with certain services relating
18	certification, and I think you mentioned a	18	to the Pension Protection Act?
19	couple of moments ago in your testimony	19	A. Yes, they did.
20	about zone certifications.	20	Q. And what do you remember the
21	Did you participate at board	21	nature of those proposals to be?
22	meetings in which Segal would discuss the	22	A. Mr. Urbank had suggested to us
23	need to have zone certifications?	23	that we may hire them to do an asset
24	A. Yes.	24	liability modelling study.
25	Q. And how often would those board	25	Q. And did the trustees approve
25	meetings occur?	25	Segal going ahead with such a study?
	Page 975		Page 976
1	Page 975 Hayes - Direct	1	Page 976 Hayes - Direct
1 2		1 2	_
	Hayes - Direct		Hayes - Direct
2	Hayes - Direct A. Yes, we did.	2	Hayes - Direct Q. Do you see that?
2	Hayes - Direct A. Yes, we did. Q. And in fact was that work	2 3	Hayes - Direct Q. Do you see that? A. Yes, I do.
2 3 4	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee?	2 3 4	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension
2 3 4 5	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was.	2 3 4 5	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information
2 3 4 5 6	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128,	2 3 4 5 6	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take
2 3 4 5 6 7	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17,	2 3 4 5 6 7	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo.
2 3 4 5 6 7 8	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008.	2 3 4 5 6 7 8	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes.
2 3 4 5 6 7 8 9 10	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the	2 3 4 5 6 7 8 9 10	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this
2 3 4 5 6 7 8 9	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at	2 3 4 5 6 7 8 9 10 11	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees
2 3 4 5 6 7 8 9 10 11 12 13	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the	2 3 4 5 6 7 8 9 10 11 12 13	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting?
2 3 4 5 6 7 8 9 10 11 12 13 14	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were	2 3 4 5 6 7 8 9 10 11 12 13 14	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we
2 3 4 5 6 7 8 9 10 11 12 13	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period
2 3 4 5 6 7 8 9 10 11 12 13 14	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I was there.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity. A. Yes, sir.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I was there. Q. Okay, now I want to draw your	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity. A. Yes, sir. Q. And please take a note of the last sentence in that paragraph, and particularly the last line of that
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I was there. Q. Okay, now I want to draw your attention to one of the exhibits to these	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity. A. Yes, sir. Q. And please take a note of the last sentence in that paragraph, and
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I was there. Q. Okay, now I want to draw your attention to one of the exhibits to these minutes. It's Exhibit C, which begins on page 3319, about seven pages in to Exhibit 128. It's an April 17, 2008 memo	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity. A. Yes, sir. Q. And please take a note of the last sentence in that paragraph, and particularly the last line of that
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I was there. Q. Okay, now I want to draw your attention to one of the exhibits to these minutes. It's Exhibit C, which begins on page 3319, about seven pages in to Exhibit 128. It's an April 17, 2008 memo from Urbank and Egan to the board.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity. A. Yes, sir. Q. And please take a note of the last sentence in that paragraph, and particularly the last line of that sentence.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Direct A. Yes, we did. Q. And in fact was that work performed and presented to the trustee? A. Yes, it was. Q. Okay, let's turn to Exhibit 128, which are meeting materials from April 17, 2008. A. Yes, I have it. Q. And again, please take a look at the first page of the minutes and the discussion of the trustees who were present. A. Yes, I have it. Q. Did you attend this meeting? A. Again, I don't have any specific recollection, but it says I was there, so I was there. Q. Okay, now I want to draw your attention to one of the exhibits to these minutes. It's Exhibit C, which begins on page 3319, about seven pages in to Exhibit 128. It's an April 17, 2008 memo	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Direct Q. Do you see that? A. Yes, I do. Q. And the memo is entitled Pension Protection Act of 2006, information requirements for zone certification. Take a moment to review this memo. A. Yes. Q. Do you recall seeing this particular memo at a board of trustees meeting? A. Not this particular memo, but we had memos like this throughout the period because the zones were done annually, so. Q. Please take a look at page 2 of the memo under the heading projected industry activity. A. Yes, sir. Q. And please take a note of the last sentence in that paragraph, and particularly the last line of that sentence. A. Yes, sir.

	Page 977		Page 978
1	Hayes - Direct	1	Hayes - Direct
2	expected wage increases in future years,	2	practices that were engaged in by the
3	since contributions are a percentage of	3	advisors to the Fund and the
4	wages. Although I understand you don't	4	terminology that was used at trustee
5	recall this particular document, let me ask	5	meetings is very important to the
6	you this question. Do you recall seeing	6	determination of what contribution
7	documents in which Segal referred to Fund	7	base units are. Moreover, while the
8	contributions as a percentage of wages?	8	documents do speak for themselves, I'm
9	A. Yes.	9	trying once I lay the foundation and
10	Q. Do you recall Segal	10	have the witness acknowledge what the
11	representatives who attended trustee	11	document is saying to go on to ask
12	meetings describing the Pension Fund's	12	questions about the terminology and
13	contributions as a percentage of wages?	13	how it may have been discussed.
14	MR. RICHMAN: Objection. Come	14	That's exactly the last question that
15	on, all we're doing here is reading	15	I asked.
16	documents. I mean, what are we doing?	16	THE ARBITRATOR: Well,
17	And the questions are leading besides	17	certainly the last question you asked
18	that. We have said repeatedly, and	18	we can have. I don't think it's
19	all you have to do is read the	19	necessary to go through and have him
20	documents to say they say percentage	20	point to each thing. I'm sure you'll
21	of wages. The documents tell us that,	21	do that with precision in your brief.
22	right? I don't understand what we're	22	Q. Alright, so may I turn back to
23	doing here.	23	the last question. Do you recall Segal
24	MR. MILLER: Well, first,	24	representatives who attended trustee
25	obviously terminology and the	25	meetings describing the Pension Fund's
	obviously terminology and the		incetings describing the rension rands
	Page 979		Page 980
1	Page 979 Hayes - Direct	1	Page 980 Hayes - Direct
2	Hayes - Direct contribution?	2	Hayes - Direct A. It was consistent.
	Hayes - Direct	2	Hayes - Direct A. It was consistent. Q. Did use of this terminology
2	Hayes - Direct contribution? MR. RICHMAN: Objection, that's leading.	2 3 4	Hayes - Direct A. It was consistent. Q. Did use of this terminology influence your understanding of the
2	Hayes - Direct contribution? MR. RICHMAN: Objection, that's leading. THE ARBITRATOR: I agree.	2 3 4 5	Hayes - Direct A. It was consistent. Q. Did use of this terminology influence your understanding of the contribution formula?
2 3 4 5 6	Hayes - Direct contribution? MR. RICHMAN: Objection, that's leading.	2 3 4 5 6	Hayes - Direct A. It was consistent. Q. Did use of this terminology influence your understanding of the contribution formula? MR. RICHMAN: Objection.
2 3 4 5 6 7	Hayes - Direct contribution? MR. RICHMAN: Objection, that's leading. THE ARBITRATOR: I agree.	2 3 4 5 6 7	Hayes - Direct A. It was consistent. Q. Did use of this terminology influence your understanding of the contribution formula?
2 3 4 5 6	Hayes - Direct contribution? MR. RICHMAN: Objection, that's leading. THE ARBITRATOR: I agree. Q. Fair enough. Do you recall	2 3 4 5 6 7 8	Hayes - Direct A. It was consistent. Q. Did use of this terminology influence your understanding of the contribution formula? MR. RICHMAN: Objection.
2 3 4 5 6 7	Hayes - Direct contribution? MR. RICHMAN: Objection, that's leading. THE ARBITRATOR: I agree. Q. Fair enough. Do you recall attending trustee meetings in which there were descriptions of MR. RICHMAN: Objection.	2 3 4 5 6 7 8	Hayes - Direct A. It was consistent. Q. Did use of this terminology influence your understanding of the contribution formula? MR. RICHMAN: Objection. THE ARBITRATOR: You're arguing
2 3 4 5 6 7 8	Hayes - Direct contribution? MR. RICHMAN: Objection, that's leading. THE ARBITRATOR: I agree. Q. Fair enough. Do you recall attending trustee meetings in which there were descriptions of	2 3 4 5 6 7 8 9	Hayes - Direct A. It was consistent. Q. Did use of this terminology influence your understanding of the contribution formula? MR. RICHMAN: Objection. THE ARBITRATOR: You're arguing now. Q. Alright, let's turn to Exhibit 131. And again, I draw your
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	Page 981		Page 982
1	Hayes - Direct	1	Hayes - Direct
2	Segal to use certain assumptions in	2	get to the point where you do recall
3	connection with their zone certification	3	meeting at a meeting, you can tell us.
4	work. Do you see that?	4	Q. Why don't you look at section 10
5	A. Yes, I do.	5	of the minutes that begin on page 4, in
6	Q. Do you recall the board of	6	paragraph B.
7	trustees authorizing Segal to make certain	7	A. Yes.
8	assumptions in connection with PPA zone	8	Q. And in reviewing paragraph B,
9	certifications?	9	you'll see that toward the end of that
10	A. Yes.	10	page, there is a discussion in which there
11	Q. In connection with that, did the	11	are a number of bullet point items relating
12	trustees ever authorize or adopt	12	to an apparent request that the trustees
13	assumptions about future shifts for Segal	13	made of the Segal representatives in
14	to use in connection with zone	14	connection with their projections. Why
15	certifications?	15	don't you review those for a moment.
16	MR. RICHMAN: Objection, it's	16	A. Okay.
17	leading.	17	Q. Let's focus on the second to last
18	THE ARBITRATOR: Sustained.	18	bullet at the bottom of the page 5, where
19	Q. Alright, let's move on to	19	there is a discussion again of reallocation
20	Exhibit 136. Same initial question, take a	20	and Welfare Fund contributions. Do you see
21	look at page 1. It should be the same	21	that language?
22	answer sir, no reason to believe you were	22	A. Yes, I do.
23	not at the reason?	23	Q. And there is a mention in that
24	A. Exactly.	24	language of Welfare Fund offset
25	THE ARBITRATOR: Maybe if we	25	contributions based on shift rate
	Page 983		Page 984
1	Hayes - Direct	1	Hayes - Direct
2	Hayes - Direct contributions, do you see that?	2	Hayes - Direct the money, and the discussion here talked
2	Hayes - Direct contributions, do you see that? A. Yes, I do.	2	Hayes - Direct the money, and the discussion here talked about having that loss, if you will,
2 3 4	Hayes - Direct contributions, do you see that? A. Yes, I do. Q. I think you testified a couple of	2 3 4	Hayes - Direct the money, and the discussion here talked about having that loss, if you will, covered by an increase in the shift rate
2 3 4 5	Hayes - Direct contributions, do you see that? A. Yes, I do. Q. I think you testified a couple of minutes ago that you attended board	2 3 4 5	Hayes - Direct the money, and the discussion here talked about having that loss, if you will, covered by an increase in the shift rate and what they're talking about here is, as
2 3 4 5 6	Hayes - Direct contributions, do you see that? A. Yes, I do. Q. I think you testified a couple of minutes ago that you attended board meetings in which the subject of pension	2 3 4 5 6	Hayes - Direct the money, and the discussion here talked about having that loss, if you will, covered by an increase in the shift rate and what they're talking about here is, as I said before, employees pay for welfare.
2 3 4 5 6 7	Hayes - Direct contributions, do you see that? A. Yes, I do. Q. I think you testified a couple of minutes ago that you attended board meetings in which the subject of pension diversion was discussed?	2 3 4 5 6 7	Hayes - Direct the money, and the discussion here talked about having that loss, if you will, covered by an increase in the shift rate and what they're talking about here is, as I said before, employees pay for welfare. Employees pay a set amount of dollars per
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Hayes - Direct contributions, do you see that? A. Yes, I do. Q. I think you testified a couple of minutes ago that you attended board meetings in which the subject of pension diversion was discussed? A. Yes. Q. And did you also attend board meetings at which the subject of reallocation of monies from the Welfare Fund back to the Pension Fund, was that discussed? A. Yes. Q. And what do you recall about those discussions relating to reallocation at these meetings? A. At this meeting we were discussing because of the condition of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Hayes - Direct the money, and the discussion here talked about having that loss, if you will, covered by an increase in the shift rate and what they're talking about here is, as I said before, employees pay for welfare. Employees pay a set amount of dollars per shift into the Welfare Fund. So this talks about increasing that per shift contribution. THE ARBITRATOR: Did you say employees? A. Employees. So this talks about increasing that contribution for employees, or doing a modification to their benefits, or maybe a little of both. Q. Alright, now let's turn to Exhibit 137. And I'd like to draw your attention to the first page under the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Hayes - Direct contributions, do you see that? A. Yes, I do. Q. I think you testified a couple of minutes ago that you attended board meetings in which the subject of pension diversion was discussed? A. Yes. Q. And did you also attend board meetings at which the subject of reallocation of monies from the Welfare Fund back to the Pension Fund, was that discussed? A. Yes. Q. And what do you recall about those discussions relating to reallocation at these meetings? A. At this meeting we were discussing because of the condition of the zone reallocating the diversion money that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Hayes - Direct the money, and the discussion here talked about having that loss, if you will, covered by an increase in the shift rate and what they're talking about here is, as I said before, employees pay for welfare. Employees pay a set amount of dollars per shift into the Welfare Fund. So this talks about increasing that per shift contribution. THE ARBITRATOR: Did you say employees? A. Employees. So this talks about increasing that contribution for employees, or doing a modification to their benefits, or maybe a little of both. Q. Alright, now let's turn to Exhibit 137. And I'd like to draw your attention to the first page under the heading discussion of funding improvement
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	Page 985		Page 986
1	Hayes - Direct	1	Hayes - Direct
2 trustee		2	certain areas that would then calculate out
	Yes, sir.	3	where our zone would be over 10 years,
	At the bottom of the next page,	4	20 years, that sort of thing.
	2, in the last paragraph, there is a	5	Q. Okay, and at these interactive
	ssion of Segal representatives	6	sessions or at this interactive session,
	cting an interactive presentation. Do	7	did Segal model future contribution
	ee that?	8	amounts?
	Yes, I do.	9	A. Yes, they did.
	Do you remember attending a board	10	Q. And what do you recall about the
	stees meeting in which there were	11	method and terminology they used in
	ctive presentations from Segal?	12	connection with modelling future
	I remember attending a meeting	13	contribution methods?
	there was an interactive	14	A. The modelling of the future
	ntation.	15	contributions were basically a change in
	And can you describe generally	16	the rate, the rate being a percentage, so
	occurred during the course of that	17	they were looking at move the percentage of
	ntation?	18	the wages from 8 percent to 10 percent or
	Yes. Ms. Egan and Mr. Urbank	19	from 8 percent to 11 percent or some type
20 broug	ht with them one of the people from	20	of combination until they were able to get
	irm that came in with this	21	the funding up into the zone, the green
22 interac	ctive program. We were at Proskauer	22	zone, and how long it would stay green
	time and they were able to project	23	until we had to do something else.
	rogram on to a screen where you could	24	Q. Now let's take a look at the
	ly see them make manipulations to	25	exhibit to these minutes, it's only one I
	1		•
	Page 987		Page 988
1	-	1	
	Page 987 Hayes - Direct e, and I believe it's not labelled as	1 2	Hayes - Direct
² believe	Hayes - Direct e, and I believe it's not labelled as		Hayes - Direct remember one interactive meeting, but then
believesuch, b	Hayes - Direct	2	Hayes - Direct remember one interactive meeting, but then there were a host of meetings that went on
 believe such, b A. 	Hayes - Direct e, and I believe it's not labelled as out it begins at Fund 3366.	2	Hayes - Direct remember one interactive meeting, but then
 believe such, b A. 	Hayes - Direct e, and I believe it's not labelled as out it begins at Fund 3366. Yes, I see that. Take a moment to look at that	2 3 4	Hayes - Direct remember one interactive meeting, but then there were a host of meetings that went on after that where we basically talked through what we had seen on the board, and
 believe such, b A. Q. exhibit 	Hayes - Direct e, and I believe it's not labelled as out it begins at Fund 3366. Yes, I see that. Take a moment to look at that	2 3 4 5	Hayes - Direct remember one interactive meeting, but then there were a host of meetings that went on after that where we basically talked through what we had seen on the board, and we made suggestions sometimes of, if you
 believe such, b A. Q. exhibit A. 	Hayes - Direct e, and I believe it's not labelled as but it begins at Fund 3366. Yes, I see that. Take a moment to look at that	2 3 4 5 6	Hayes - Direct remember one interactive meeting, but then there were a host of meetings that went on after that where we basically talked through what we had seen on the board, and
 believe such, b A. Q. exhibit A. Q. 	Hayes - Direct e, and I believe it's not labelled as but it begins at Fund 3366. Yes, I see that. Take a moment to look at that t. Yes.	2 3 4 5 6 7	Hayes - Direct remember one interactive meeting, but then there were a host of meetings that went on after that where we basically talked through what we had seen on the board, and we made suggestions sometimes of, if you change this, what would occur.
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2 believe 3 such, b 4 A. 5 Q. 6 exhibit 7 A. 8 Q. 9 recall t 10 A. 11 distribu 12 funding 13 as I wa	Hayes - Direct e, and I believe it's not labelled as but it begins at Fund 3366. Yes, I see that. Take a moment to look at that it. Yes. What is this document? Do you this document? This is the document that was uted by Segal talking about the g improvement plan. This is again, as talking about, those different	2 3 4 5 6 7 8 9 10	Hayes - Direct remember one interactive meeting, but then there were a host of meetings that went on after that where we basically talked through what we had seen on the board, and we made suggestions sometimes of, if you change this, what would occur. Q. And I want you to focus again on this slide deck. And do you recall a meeting or multiple meetings in which you discussed this slide deck or versions of
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	Page 989		Page 990
1		1	Hayes - Direct
2	Hayes - Direct discussion of this document, was there any	2	heading 8, which is entitled Segal Company
3	discussion of what that 8 percent of CR	3	Report. Why don't you take a moment and
4	was, or was of?	4	review the discussion under VIII(A).
5	A. Yes. As I stated before, it was	5	A. Yes, sir, I see that.
6	a percentage of wages.	6	Q. Do you remember this discussion
7	Q. And now let's focus, going ahead	7	about El Diario at any board of trustee
8	to page or slide deck page 12, which is	8	meeting?
9	Fund 3378. And you'll see that there is a	9	A. I do not recall that, no.
10	mention of scenarios and scenarios 2 and 3.	10	Q. Do you have a view as to why you
11	It uses that same term methodology. And	11	don't remember a board meeting at which El
12	did you have the same, similar discussion	12	Diario was discussed?
13	respecting what that terminology meant in	13	THE ARBITRATOR: He didn't say
14	these meetings?	14	that.
15	A. Yes, it was very clear.	15	Q. Do you have a view as to why you
16	Q. Alright, let's turn to	16	do not remember attending a board of
17	Exhibit 138.	17	trustee meeting in which board of
18	A. Yes, sir.	18	trustee meeting discussing Diario?
19	Q. In fact let's move ahead to	19	A. Yes, I do have a thought about
20	Exhibit 140. October 11, 2011.	20 21	that.
21 22	A. Yes, sir.	22	Q. And why don't you explain.
23	Q. And again on the first page it	23	A. In preparation for my testimony,
24	indicates that you were present. I want	24	because I had not really seen this and
25	you to draw your attention to page 4 of the minutes, and the discussion under the	25	focused on this, I went back to check my calendar to see what was happening that
	initiates, and the discussion under the		calendar to see what was happening that
	Page 991		Page 992
1	Page 991 Hayes - Direct	1	Hayes - Direct
2	Hayes - Direct day. And as it turned out I was double	2	Hayes - Direct back at headquarters, was it a meeting of
2	Hayes - Direct day. And as it turned out I was double booked for meetings that day. So I may	2	Hayes - Direct back at headquarters, was it a meeting of consequence for you?
2 3 4	Hayes - Direct day. And as it turned out I was double booked for meetings that day. So I may have missed this because I departed this	2 3 4	Hayes - Direct back at headquarters, was it a meeting of consequence for you? A. It was a very important meeting.
2 3 4 5	Hayes - Direct day. And as it turned out I was double booked for meetings that day. So I may have missed this because I departed this meeting early so I could get back to a	2 3 4 5	Hayes - Direct back at headquarters, was it a meeting of consequence for you? A. It was a very important meeting. The Times was looking at doing a reduction
2 3 4 5 6	Hayes - Direct day. And as it turned out I was double booked for meetings that day. So I may have missed this because I departed this meeting early so I could get back to a meeting at headquarters.	2 3 4 5 6	Hayes - Direct back at headquarters, was it a meeting of consequence for you? A. It was a very important meeting. The Times was looking at doing a reduction in force, in its staffing, so it was a very
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2 3 4 5 6 7 8	Hayes - Direct day. And as it turned out I was double booked for meetings that day. So I may have missed this because I departed this meeting early so I could get back to a meeting at headquarters. Q. And when you reviewed your calendar, what did it show about the timing	2 3 4 5 6 7 8	Hayes - Direct back at headquarters, was it a meeting of consequence for you? A. It was a very important meeting. The Times was looking at doing a reduction in force, in its staffing, so it was a very important meeting. Q. Why don't you turn to page 1 of
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Page 9	93 Page 994
1 Hayes - Direct	¹ Hayes - Direct
A. Yes, sir.	Q. And who signs what is the
Q. And focus on the first page which	protocol for signing the minutes of this
is the agenda page, and focus on the first	Fund's trustee meeting?
item of the agenda for that day. Do you	A. The minutes will be signed by one
see what that is?	union trustee and one publisher trustee.
A. Yes, I do.	Q. Let's go back to the minutes of
Q. So that relates to adoption of	October 11, 2011. And the signatures on
9 minutes of, among other things, the	those influtes are on page o.
October 11th meeting? A. Yes.	A. 1 cs, sir.
	Q. It's I tild 5176. And you'll note
Q. As far as you know, did you attend this meeting on December 9th?	the employer trustee signature. Is that your signature?
A. Same as before, I'm listed as	14 A. No, it's not.
being there. I have no reason to believe I	Q. Whose signature is that?
wasn't.	16 A. That's Dan Murphy's signature.
Q. When minutes of this Fund's	Q. Who is he?
trustees are formally adopted, are they	A. He was my partner trustee on the
executed?	publisher side.
A. They're executed at the meeting,	Q. Even on occasions where you did
yes.	not sign minutes, was it your practice to
THE ARBITRATOR: I'm not sur	
know what you mean by executed.	A. Normally yes.
Q. Are the minutes signed?	Q. And when would you do that?
A. They're signed at the meeting.	A. They would send the minutes out
Page 9	95 Page 996
Page 9: 1 Hayes - Direct	Page 996 Hayes - Direct
Hayes - Direct to us and we would review those minutes a	1 Hayes - Direct nd 2 are aware, what was the purpose of this
Hayes - Direct to us and we would review those minutes a make comments before we would meet at t	1 Hayes - Direct nd 2 are aware, what was the purpose of this he 3 meeting in the winter of 2013?
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Page 997 Hayes - Direct the contribution rate to this Fund. Do you see that? A. I do. Q. Do you recall whether in the presentation that Segal made relating to proposed schedules for funding improvement Page 997 Hayes - Direct net contribution. Q. Alright, I now want to turn your attention to page 5 of the minutes. That's the last page. A. Yes, sir. Q. And the discussion under heading	98
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⁷ proposed schedules for funding improvement ⁷ Q. And the discussion under heading	
8 plans, Segal orally describing the Fund's 8 C, selection of schedules for the FIP,	
9 contribution rates in a manner similar to 9 discusses the trustee determination. But	ĺ
what is described in this 10 want you to focus on the second paragra	
MR. RICHMAN: Objection; come and why don't you read that to yourself f	
on. 12 a moment. And that second paragraph to	
THE ARBITRATOR: You're about the union adopting an alternative	
slipping. 14 slipping. 14 schedule which was part of the funding	
Q. Do you recall Segal describing 15 improvement plan.	
the employer contribution rate for the let me ask you, do you know how	
pension plan in connection with any of the union employees and officials are	
meetings which discussed funding 18 compensated?	
improvement plan schedules? 19 A. They're salaried.	
20 A. Yes, sir. 20 Q. And do union officials get paid	
Q. And what do you recall about how 21 based on shifts worked?	
they characterized the contribution? 22 A. No.	
A. They were always characterized as Q. Does the union make contribution	S
a percentage of wages and the percentages 24 to the NMDU Fund?	
were adjusted that would drive a different 25 A. As far as I know, yes.	
	ļ
Page 999 Page 10	00
1 Hayes - Direct 1 Hayes - Direct	ļ
2 Q. Now let's turn to Exhibit 150. 2 A. I'm sure I did.	
3 A. Yes, sir. 3 Q. In all of the meetings over the	
4 Q. These are minutes to a board 4 years in which Segal had discussed the	
5 meeting on June 20, 2014. 5 Pension Protection Act and funding	
6 A. Yes, sir. 6 improvement plans, do you recall the Sega	
7 Q. And let's not focus on the actual 7 representatives ever using this terminology	
8 minutes themselves, but rather one of the 8 to describe the contributions?	
9 attachments in Exhibit A, that's on 3437.	
	ļ
10 A. Yes, sir. 10 THE ARBITRATOR: What's the	
10 A. Yes, sir. 10 THE ARBITRATOR: What's the Objection?	
10 A. Yes, sir. 11 Q. It's an April 4, 2014 memo from 12 Egan and Urbank to the board. Can you 10 THE ARBITRATOR: What's the objection? 11 objection? 12 MR. RICHMAN: Leading.	
10 A. Yes, sir. 11 Q. It's an April 4, 2014 memo from 12 Egan and Urbank to the board. Can you 10 THE ARBITRATOR: What's the objection? 11 objection? 12 MR. RICHMAN: Leading.	
10 A. Yes, sir. 11 Q. It's an April 4, 2014 memo from 12 Egan and Urbank to the board. Can you 13 please review this memo and you only 10 THE ARBITRATOR: What's the objection? 11 objection? 12 MR. RICHMAN: Leading. 13 MR. MILLER: I don't think it	e
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Page 1001	Page 1002
1 Hayes - Cross	¹ Hayes - Cross
² questions at this time.	had the interactive program. I remember
³ (Recess taken: 10:24-10:59 a.m.)	3 that very clearly.
4 CROSS-EXAMINATION BY MR. RICHMAN:	Q. And what date was that?
⁵ Q. Mr. Hayes, you testified	5 A. I don't remember the date, but I
6 previously that on July 25, 2007 you became	6 remember the meeting itself very clearly.
⁷ a trustee. Do you remember that?	Q. And how long was that meeting?
8 A. Yes.	8 A. That meeting lasted probably four
⁹ Q. So that was your first meeting.	9 hours.
And what I'd like you to take a look at is	Q. How long was the Segal report?
¹¹ Exhibit 127.	A. It was all Segal. There was
¹² A. Yes, sir.	nothing else happening.
Q. You did attend that meeting,	Q. And do you remember the month
14 correct?	that meeting occurred in?
A. Yes, I have no reason to think I	15 A. No.
16 didn't.	Q. Do you remember the year?
Q. Okay, but you have no real	17 A. No.
recollection of attending that meeting?	Q. So if you take a look at
A. No specific recollection.	Exhibit 127, let's look at the agenda which
Q. Okay. And as I understand your	is 3450. Do you see that?
testimony, and correct me if I'm wrong	A. Yes.
let me rephrase that. Do you have a	Q. And if you look at 6 on the
specific recollection of attending any	agenda, Weiser, LLP, do you know who those
meeting of the Fund?	folks are?
A. I remember the meeting where we	A. Yes.
Page 1003	
Faue 1000	Page 1004
	Page 1004
¹ Hayes - Cross	¹ Hayes - Cross
Hayes - Cross Q. Who are they?	Hayes - Cross look at page 5. And what I'm looking at is
Hayes - Cross Q. Who are they? A. Those are the accountants.	Hayes - Cross look at page 5. And what I'm looking at is the Weiser, LLP report, if you could take a
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	Page 1005		Page 1006
1	-	1	_
2	Hayes - Cross	2	Hayes - Cross
3	A. Not at the meeting. I may have	3	report to you that the Fund's financial
4	reviewed some of them after, but not at the	4	reports were incorrect?
5	meeting, no.	5	A. Incorrect?
6	Q. You may review some of them	6	Q. Incorrect.
7	after?	7	A. No.
8	A. Yes.	8	Q. And did any of them ever report
9	Q. Have you ever reviewed a	9	to you that they contained information that
10	financial report of the Pension Fund?	10	was not correct?
11	A. Yes.	11	A. No.
12	Q. Yes, okay. And you do understand	12	Q. And I know I mentioned Fund
13	that financial reports have footnotes, or	13	counsel in that. One of those Fund counsel
14	notes?	14	was Mr. Schelberg?
15	A. Yes.	15	A. Yes.
16	Q. I'm sorry, I forget, what is your	16	Q. That's from Proskauer?
17	position at the New York Times?	17	A. Yes.
18	A. I'm Senior Vice-President of	18	Q. And that's the same firm that The
19	Operations and Labor.	19	New York Times uses at times for labor
20	Q. And you read financial reports	20	relations purposes, correct?
21	before? A. Yes.	21	A. Yes.
22		22	Q. And did any of the Segal folks
23	Q. Okay. Let's take a look at	23	ever report to you that the Fund's
24	oh, I'm sorry, did any of the Fund	24	financial reports prepared by the Weiser firm were incorrect?
25	professionals, and by that I mean any of	25	A. No.
20	the lawyers, of which there were many, ever	23	A. No.
	Page 1007		
	rage 1007		Page 1008
1	Hayes - Cross	1	Page 1008 Hayes - Cross
1 2		1 2	
	Hayes - Cross		Hayes - Cross
2	Hayes - Cross Q. Did Murray Schwartz report to you	2	Hayes - Cross received during the course of this
2 3	Hayes - Cross Q. Did Murray Schwartz report to you that any of the financial reports the	2 3	Hayes - Cross received during the course of this hearing.
2 3 4 5 6	Hayes - Cross Q. Did Murray Schwartz report to you that any of the financial reports the Weiser firm prepared were incorrect?	2 3 4 5 6	Hayes - Cross received during the course of this hearing. MR. RICHMAN: I call him as a
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		1
	Page 1009	Page 1010
1	Hayes - Cross	¹ Hayes - Cross
2	notes that say very specifically what	the minutes.
3	the contribution based unit is for the	3 MR. MILLER: And there is no
4	Fund's employers. And I understand	4 reason as a consequence that he should
5	why The New York Times doesn't want to	be given a second bite at the apple.
6	get into this, but this happened	6 He was not prohibited during that
7	repeatedly at meetings on an annual	7 first time around from using those
8	basis.	8 reports for the very purpose he's
9	THE ARBITRATOR: Discussions at	9 currently attempting to use them.
10	the meetings?	10 THE ARBITRATOR: You can
11	MR. RICHMAN: Yes.	examine what was discussed at the
12	THE ARBITRATOR: Do you want to	meetings to the extent that it goes to
13	respond?	his understanding of what the terms
14	MR. MILLER: Yes. To the extent	14 were.
15	that those financial reports were	15 MR. RICHMAN: I'm going to take
16	available to Mr. Richman during the	a little break, and maybe I can
17	first time that Mr. Hayes appeared, he	a fittle ofeak, and maybe I can shorten this.
18	had every license at that juncture to	18 (Recess taken: 11:12-11:16 a.m.)
19	use those financial reports. And	19 CONTINUED CROSS-EXAMINATION BY MR. RICHMAN:
20		20 O. So let's take a look at
21	indeed yes he did, and that was the opportunity to examine Mr. Hayes about	Q. So let's take a look at
22		Exhibit 131. And were you present at this
23	what those financial reports said and	meeting.
24	whether Mr. Hayes had reviewed those	71. I have no reason to timik i
25	reports. MR. RICHMAN: We didn't have	24 wasn't. 25 O Do you have a recollection of
	WR. RICHWAN. We didn't have	Q. Do you have a recollection of
	Page 1011	Page 1012
1	Hayes - Cross	1 Hayes - Cross
2	this meeting?	that?
3	A. Not specifically.	3 A. Yes.
4	Q. Do you remember if anything	Q. And do you recall Mr. Lewis doing
5	occurred at this meeting?	5 that?
6	A. Not specifically.	6 A. As I said, Mr. Lewis's reports
7	Q. And let's take a look at the	were pretty succinct, so I'm sure he did.
8	agenda, and on it you see, and that's the	8 Q. Okay, but I asked you a question
9	first page of Exhibit 131, do you see that?	9 not about the nature of his reports, but I
10	A. Yes, I do.	asked if you recall that he did that.
11	Q. And 5, Weiser LP re financial	A. I have no specific recollection.
12	statements, do you see that?	Q. But you have no doubt that he
13	A. Yes, I do.	did?
1		A. I have no doubt that he did his
14	O. And let's go to part of the	
14 15	Q. And let's go to part of the meeting where that's discussed, which is at	
	meeting where that's discussed, which is at	usual quick report.
15	meeting where that's discussed, which is at page 4 of the minutes.	usual quick report. Q. Okay, and how long was his quick
15 16	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir.	usual quick report. Q. Okay, and how long was his quick report?
15 16 17	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir. Q. Okay, and it says Mitch Lewis	usual quick report. Q. Okay, and how long was his quick report? A. Usually less than five minutes.
15 16 17 18	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir. Q. Okay, and it says Mitch Lewis provided do you see where I'm reading	usual quick report. Q. Okay, and how long was his quick report? A. Usually less than five minutes. Q. And did you ever ask him any
15 16 17 18 19	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir. Q. Okay, and it says Mitch Lewis provided do you see where I'm reading from?	usual quick report. Q. Okay, and how long was his quick report? A. Usually less than five minutes. Q. And did you ever ask him any questions about any of the financial
15 16 17 18 19 20	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir. Q. Okay, and it says Mitch Lewis provided do you see where I'm reading from? A. Yes.	usual quick report. Q. Okay, and how long was his quick report? A. Usually less than five minutes. Q. And did you ever ask him any questions about any of the financial reports?
15 16 17 18 19 20 21	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir. Q. Okay, and it says Mitch Lewis provided do you see where I'm reading from? A. Yes. Q. Mr. Lewis provided and reviewed	usual quick report. Q. Okay, and how long was his quick report? A. Usually less than five minutes. Q. And did you ever ask him any questions about any of the financial reports? A. Not that I specifically remember.
15 16 17 18 19 20 21 22	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir. Q. Okay, and it says Mitch Lewis provided do you see where I'm reading from? A. Yes. Q. Mr. Lewis provided and reviewed with the trustees the final financial	usual quick report. Q. Okay, and how long was his quick report? A. Usually less than five minutes. Q. And did you ever ask him any questions about any of the financial reports? A. Not that I specifically remember. Q. Okay, do you remember other
15 16 17 18 19 20 21 22 23	meeting where that's discussed, which is at page 4 of the minutes. A. Yes, sir. Q. Okay, and it says Mitch Lewis provided do you see where I'm reading from? A. Yes. Q. Mr. Lewis provided and reviewed	usual quick report. Q. Okay, and how long was his quick report? A. Usually less than five minutes. Q. And did you ever ask him any questions about any of the financial reports? A. Not that I specifically remember. Q. Okay, do you remember other

		1	
	Page 1013		Page 1014
1	Hayes - Cross	1	Hayes - Cross
2	A. Not that I specifically remember.	2	use for finances and that sort of thing.
3	Q. Okay, let's go to 134. And were	3	Q. Okay, does anyone get excluded
4	you at this meeting?	4	from the room when Mr. Weiser when
5	A. There is no reason for me to	5	Mr. Lewis gives his reports?
6	think I wasn't.	6	A. Not usually.
7	Q. And you see on the agenda the	7	Q. So let's take a look at
8	Weiser report?	8	Exhibit 140, please.
9	A. Yes.	9	A. Yes, sir.
10	Q. Okay, and let's turn to page 4 of	10	Q. And you were present at this
11	the minutes.	11	meeting?
12	A. Yes.	12	A. Yes, I was present for a portion
13	Q. And do you remember Mr. Lewis	13	of the meeting.
14	distributing and reviewing the financial	14	Q. For a portion of the meeting?
15	reports for 2009 and 2008?	15	A. Yes.
16 17	A. I have no specific memory of it,	16 17	Q. And this is the meeting that you
17 18	but that's his usual practice.	18	left early?
19	Q. Okay, and do you remember anybody	19	A. Yes.
20	raising any questions about the reports?	20	Q. By the way, where is your office in relation to Proskauer's office?
21	A. Not specifically.	21	
22	Q. Okay, when Mr. Lewis gives his	22	A. It's across the street.
23	reports, who is in attendance?	23	Q. Across the street? A. Yes.
24	A. The trustees are there, the lawyers of course, Mr. Schwartz, and	24	Q. And what street is that crossing?
25	sometimes some of the other people that we	25	A. It's across 41st Street.
	sometimes some of the other people that we		A. 113 de1055 4151 Street.
	Page 1015		Page 1016
1	Hayes - Cross	1	Hayes - Cross
2	Q. When you see the on page 3 of	2	you. And so you see the WeiserMazars
3	the minutes, there is a WeiserMazars	3	report?
4	report, do you see that?	4	A. Yes.
5	A. Yes.	5	Q. Now, this description is a little
6	Q. And do you have any reason to	6	bit different than the description that
7	doubt that was given at that meeting?	7	we've seen in the previous minutes about
8	A. I have no doubt that it was.	8	Mr. Lewis's report. This one says
9	Q. Do you have any recollection of	9	Mr. Lewis distributed and reviewed in
10	that report being given at the meeting?	10	detail the final statements. Do you see
11	A. No.	11	that?
12	Q. Let's go to Exhibit 142. Were	12	A. I see that.
13	you in attendance at this meeting?	13	Q. Do you have any reason to believe
14	A. Yes, I have no reason to think I	14	that that's not accurate?
15	wasn't on the list.	15	A. It wasn't usually his practice to
16	Q. Okay, and so if you look on the	16	do detailed anything.
17	agenda, you see the WeiserMazars report?	17	Q. That wasn't the question I asked
18 19	A. Yes.	18 19	you?
20	Q. And that's for fiscal years May	20	A. What was the question?
21	31, 2010 and May 31, 2011, do you see that?	21	Q. I said do you have any reason to
22	A. Yes.	22	believe that the minutes are inaccurate?
23	Q. Alright, let's turn to the page 4 of the report.	23	A. I don't recall him doing a detailed meeting.
24	A. Page 4 of the minutes.	24	Q. So do you think that the minutes
	Q. Of the minutes, I'm sorry, thank	25	are inaccurate?
25			

	Page 1017		Page 1018
1	Hayes - Cross	1	Hayes - Cross
2 A	A. Possibly.	2	Q. Okay. Was overtime included?
). Possibly. But other than you	3	A. I don't do the calculation, so I
	t recall, you don't have any other	4	can't tell you the elements.
	on to believe that these minutes are	5	Q. Do you know how many shifts The
	curate?	6	Times pays for when contributing to the
	A. Except it wasn't the practice of	7	Pension Fund?
	Lewis to give us more than a	8	A. As I say, we contributed based on
	-minute run-through.	9	a percentage of wages. Shifts are I
	2. Okay, now, you indicated at the	10	don't even know what that means when it
	of your testimony today that the	11	comes to contribution to the pension.
12 cont	ribution that The Times made to the	12	Q. Do you know what a shift is?
	sion Fund was a percentage of wages, is	13	A. I know what a shift is.
	correct?	14	Q. You do, okay. Do you know
	A. Yes.	15	A. But it has no relationship to our
	2. And that's what you believe the	16	requirement to make a contribution to the
	ribution to be, a percentage of wages?	17	Pension Fund.
	A. Yes.	18	Q. It has no relationship to that?
	2. And that percentage changed over	19	A. No.
	e, didn't it?	20	Q. Did you ever read the collective
	A. It changed with the diversion,	21	bargaining agreement between The Times and
²² yes.	i. It changes with the diversion,	22	the NMDU?
). But in your mind the contribution	23	MR. MILLER: Objection, asked
	gation was a percentage of wages?	24	and answered.
	A. Yes.	25	THE ARBITRATOR: I know. The
1	1. 100.		THE ARBITRATOR. TRIIOW. THE
	Page 1019		Page 1020
1	Page 1019 Hayes - Cross	1	Page 1020 Hayes - Cross
² prob	Hayes - Cross lem is your last question to him	2	Hayes - Cross MR. RICHMAN: I think so,
² prob	Hayes - Cross		Hayes - Cross
 prob oper agre 	Hayes - Cross plem is your last question to him ned this whole thing up. If you'll e to strike the last question and	2 3 4	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And
 prob open agre ansv 	Hayes - Cross lem is your last question to him ned this whole thing up. If you'll e to strike the last question and ver, I'll cut this off and rely on	2 3 4 5	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some
 prob oper agre answ wha 	Hayes - Cross lem is your last question to him ned this whole thing up. If you'll e to strike the last question and ver, I'll cut this off and rely on t we went through the first day.	2 3 4 5 6	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I
 prob oper agre ansv wha N 	Hayes - Cross lem is your last question to him ned this whole thing up. If you'll e to strike the last question and ver, I'll cut this off and rely on	2 3 4 5 6 7	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I do have the right to go into the
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 2 prob 3 oper 4 agre 5 answ 6 wha 7 N 8 unde 9 N 	Hayes - Cross blem is your last question to him ned this whole thing up. If you'll e to strike the last question and ever, I'll cut this off and rely on t we went through the first day. MR. RICHMAN: I don't erstand how you can do that. MR. MILLER: I'm prepared to do	2 3 4 5 6 7 8 9	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I do have the right to go into the
 2 prob 3 oper 4 agre 5 answ 6 wha 7 N 8 unde 9 N 	Hayes - Cross blem is your last question to him ned this whole thing up. If you'll e to strike the last question and ver, I'll cut this off and rely on t we went through the first day. MR. RICHMAN: I don't erstand how you can do that.	2 3 4 5 6 7 8	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I do have the right to go into the credibility. I mean, the witness is now saying this just doesn't basically a shift doesn't have
2 prob 3 oper 4 agre 5 ansv 6 wha 7 N 8 unde 9 N	Hayes - Cross blem is your last question to him ned this whole thing up. If you'll e to strike the last question and ever, I'll cut this off and rely on t we went through the first day. AR. RICHMAN: I don't erstand how you can do that. AR. MILLER: I'm prepared to do We'll strike it. AR. RICHMAN: He has made a	2 3 4 5 6 7 8 9 10	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I do have the right to go into the credibility. I mean, the witness is now saying this just doesn't
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2 prob 3 oper 4 agre 5 answ 6 wha 7 N 8 unde 9 N 10 that. 11 N 12 state 13 you'	Hayes - Cross blem is your last question to him ned this whole thing up. If you'll e to strike the last question and wer, I'll cut this off and rely on t we went through the first day. MR. RICHMAN: I don't erstand how you can do that. MR. MILLER: I'm prepared to do We'll strike it. MR. RICHMAN: He has made a ement and he has not only if re going to strike his entire	2 3 4 5 6 7 8 9 10 11 12	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I do have the right to go into the credibility. I mean, the witness is now saying this just doesn't basically a shift doesn't have anything to do with it. And that's pretty fascinating, given the collective bargaining agreement.
2 prob 3 oper 4 agre 5 ansv 6 wha 7 N 8 unde 9 N 10 that. 11 N 12 state 13 you' 14 testi	Hayes - Cross blem is your last question to him ned this whole thing up. If you'll e to strike the last question and wer, I'll cut this off and rely on t we went through the first day. MR. RICHMAN: I don't erstand how you can do that. MR. MILLER: I'm prepared to do We'll strike it. MR. RICHMAN: He has made a ement and he has not only if re going to strike his entire mony, I'll back off. But if the	2 3 4 5 6 7 8 9 10 11 12 13 14	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I do have the right to go into the credibility. I mean, the witness is now saying this just doesn't basically a shift doesn't have anything to do with it. And that's pretty fascinating, given the collective bargaining agreement. THE ARBITRATOR: Well, when you
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2 prob 3 oper 4 agre 5 answ 6 wha 7 N 8 unde 9 N 10 that. 11 N 12 state 13 you' 14 testi 15 ar 16 about	Hayes - Cross blem is your last question to him ned this whole thing up. If you'll e to strike the last question and ever, I'll cut this off and rely on t we went through the first day. MR. RICHMAN: I don't erstand how you can do that. MR. MILLER: I'm prepared to do We'll strike it. MR. RICHMAN: He has made a ement and he has not only if re going to strike his entire mony, I'll back off. But if the ad I'm happy to have the testimony at El Diario stay. I want that to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Hayes - Cross MR. RICHMAN: I think so, because he's now said some things which are really interesting. And also, you know, look, we have some serious credibility issues here. So I do have the right to go into the credibility. I mean, the witness is now saying this just doesn't basically a shift doesn't have anything to do with it. And that's pretty fascinating, given the collective bargaining agreement. THE ARBITRATOR: Well, when you start getting into have you read the collective bargaining agreement, we
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Page 1021	Page 1022
1 Hayes - Cross	1 Hayes - Cross
opportunity to do that the last time	THE ARBITRATOR: Okay, go ahead.
around. And he also had an	3 MR. MILLER: Exactly. The
4 opportunity to cross-examine	4 questioning was about what happened at
5 Mr. Claffee, who is the person at The	5 the meeting.
6 Times who is most knowledgeable about	6 THE ARBITRATOR: But it was
7 how contributions are made.	also about his understanding of what
8 THE ARBITRATOR: In fairness,	8 the basis of the contribution was. It
9 Mr. Hayes was asked, and did talk	9 wasn't about what was or wasn't said
repeatedly about what is the basis of	at the meeting. It was certainly
contributions. So while I made the	broader. So go ahead, let's just get
effort seeing if I could trade off the	this done with. Go ahead.
last answer for cutting it off, that	13 FURTHER EXAMINATION BY MR. RICHMAN:
deal is not acceptable.	Q. So let me show you the collective
MR. RICHMAN: I'll trade off	bargaining agreement, Mr. Hayes, which I
the percentages. If you want to trade	understand from your testimony the prior
off all of that discussion, either	time that you testified, you had read.
that or we're going to go through the	This is Exhibit 8. Let's look at page 55.
whole thing and it's not going to be	Do you see that Pension Fund language?
short.	A. Yes, I do see the language.
MR. MILLER: Well, I will take	Q. And do you see it says the
you up on your offer. It was a	publisher agrees it shall contribute 8
summation question obviously, and I	percent of each employee's pay rate per
24 appreciate that, but the remainder of	shift for each shift worked by each
his testimony remains in.	employee in the bargaining unit I will
, and the second	
Page 1023	Page 1024
1 Hayes - Cross	¹ Hayes - Cross
Hayes - Cross skip the name of the fund but not in	Hayes - Cross please?
Hayes - Cross skip the name of the fund but not in excess of five shifts in any payroll week	Hayes - Cross please? Q. My question is, and if you need
Hayes - Cross skip the name of the fund but not in excess of five shifts in any payroll week in any one office for any one employee. Do	Hayes - Cross please? Q. My question is, and if you need to take a look at this language, I'll give
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	Page 1025	Page	1026
1	Hayes - Cross	1 Hayes - Cross	
2	MR. MILLER: That's asking for	² it?	
3	his contract interpretation, belief	3 MR. MILLER: Objection. We	
4	based on the language of the contract.	4 haven't gone through actuarial	
5	THE ARBITRATOR: Well, he's	5 reports.	
6	testified as to his belief is based on	6 MR. RICHMAN: The actuary'	S
7	something, so you can inquire. Go	7 reports at the meetings. The	
8	ahead.	8 actuaries reported at the meeting.	
9	THE WITNESS: My belief is not	9 THE ARBITRATOR: Okay, so	what'
10	based on this language.	the question? I'm sorry.	
11	Q. It's not based on this language?	Q. So when the phrase is used, eight	ht
12	A. No.	percent of wages or some other percent	
13	Q. And is it your belief that this	of wages, that's not a full description of	
14	language is irrelevant?	what the contribution obligation is, is i	t?
15	MR. MILLER: Objection. It's	A. Yes.	
16	argument.	Q. It is? So there is no six shift	
17	THE ARBITRATOR: Yes, it's	limit in your mind?	
18	argument.	A. The limit as we just read here is	3
19	Q. So in various actuarial reports	¹⁹ five shifts.	
20	that we've gone through today in minutes as	Q. Okay, sorry. You're right. I	
21	well as reports that are attached to the	stand corrected. But that limit doesn't	
22	minutes, when there is a phrase, for	appear anywhere in the reports that the	
23	example, eight percent of wages as the	actuary gave at various trustees' meeting	ıgs,
24	contribution rate, that is not the full	correct?	
25	description of the contribution rate, is	MR. MILLER: Objection. Nov	V
	Page 1027	Page	1028
1	Page 1027 Hayes - Cross	Page 1 Hayes - Cross	1028
1 2		_	
	Hayes - Cross	1 Hayes - Cross	
2	Hayes - Cross he's asking about what was contained	Hayes - Cross A. It was always stated as a perce	
2	Hayes - Cross he's asking about what was contained in reports.	Hayes - Cross A. It was always stated as a perce of wages.	nt
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2 3 4 5 6 7	Hayes - Cross he's asking about what was contained in reports. MR. RICHMAN: No, reports are describing MR. MILLER: Oh, the meeting description? MR. RICHMAN: Yes. THE ARBITRATOR: Thank you, go	Hayes - Cross A. It was always stated as a perce of wages. Q. So there was no limit stated? MR. MILLER: In the discussions. Q. In the discussions. A. No. Q. And you were very familiar we the PowerPoints, the PowerPoint	nt ons.
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		1	
	Page 1029		Page 1030
1	Hayes - Cross	1	Hayes - Cross
2	used to calculate pension contributions?	2	the employees' shift contribution to the
3	A. Not that I recall.	3	Welfare Fund, and I'm not talking about the
4	Q. Now, I just want to make sure the	4	different percentages that were used for
5	record is clear on something. We talked	5	the Pension and Welfare Fund, but was the
6	about a we didn't talk, you testified	6	basis for making a contribution to the
7	about an employee's shift contribution.	7	Welfare Fund different than the basis for
8	A. Yes.	8	making a contribution to the Pension Fund?
9	Q. And that was to the Welfare Fund?	9	
10	`	10	MR. MILLER: You're talking
11	A. Yes.	11	about the employer contribution?
12	Q. And that was a contribution made	12	MR. RICHMAN: Employer
13	by, actually by employees?	13	contributions, yes.
14	A. Yes.	14	A. Yes.
15	Q. It was not a contribution made by	15	Q. It was different. And why was it
16	The New York Times, correct?	16	different?
	A. Yes.	17	A. There are other elements that are
17	Q. Now, is it your view that the		part of that calculation. I'm not close
18	putting aside the employees's shift	18	enough to be able to identify them for you,
19	contribution, that contribution to the	19	but they're different.
20	Welfare Fund, and I'm not talking about	20	Q. And are they both subject to a
21	percentages because I know those changed.	21	limitation on the number of shifts?
22	The contributions to the Welfare Fund were	22	A. As I said, I'm not close enough
23	derived differently than contributions to	23	to all the elements of the welfare
24	the Pension Fund?	24	contribution to say that's true. I do know
25	Now, in your view, putting aside	25	now, there is this sixer, where if you work
	Page 1031		Page 1032
1		1	
1	Hayes - Cross	1 2	Hayes - Cross
2	Hayes - Cross a six shift, there is a contribution. But	2	Hayes - Cross meeting, yes.
2	Hayes - Cross a six shift, there is a contribution. But that limit it maybe a couple of years old.	2	Hayes - Cross meeting, yes. Q. Okay. And so if you'll look in
2 3 4	Hayes - Cross a six shift, there is a contribution. But that limit it maybe a couple of years old. Q. After the assessment of	2 3 4	Hayes - Cross meeting, yes. Q. Okay. And so if you'll look in projected industry activity, that's 4.
2 3 4 5	Hayes - Cross a six shift, there is a contribution. But that limit it maybe a couple of years old. Q. After the assessment of withdrawal liability?	2 3 4 5	Hayes - Cross meeting, yes. Q. Okay. And so if you'll look in projected industry activity, that's 4. A. Yes.
2 3 4 5 6	Hayes - Cross a six shift, there is a contribution. But that limit it maybe a couple of years old. Q. After the assessment of withdrawal liability? A. Somewhere around the same it	2 3 4 5 6	Hayes - Cross meeting, yes. Q. Okay. And so if you'll look in projected industry activity, that's 4. A. Yes. Q. And if you go towards the bottom
2 3 4 5 6 7	Hayes - Cross a six shift, there is a contribution. But that limit it maybe a couple of years old. Q. After the assessment of withdrawal liability? A. Somewhere around the same it was before because we were talking about	2 3 4 5 6 7	Hayes - Cross meeting, yes. Q. Okay. And so if you'll look in projected industry activity, that's 4. A. Yes. Q. And if you go towards the bottom of the page, and I believe it is the last
2 3 4 5 6 7 8	Hayes - Cross a six shift, there is a contribution. But that limit it maybe a couple of years old. Q. After the assessment of withdrawal liability? A. Somewhere around the same it was before because we were talking about the FIP at the time, so they were talking	2 3 4 5 6 7 8	Hayes - Cross meeting, yes. Q. Okay. And so if you'll look in projected industry activity, that's 4. A. Yes. Q. And if you go towards the bottom of the page, and I believe it is the last sentence, please note that on this point we
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	Page 1033		Page 1034
1	Hayes - Cross	1	Hayes - Cross
2	what's labelled paragraph four?	2	A. That's correct.
3	A. Right.	3	Q. Let's go to Exhibit 140, please.
4	Q. Did you ask a question about why	4	Now, I want to focus on the Segal report on
5	are you asking about average shifts?	5	El Diario. Now, as I understand it, you
6	A. No, there was no discussion at	6	don't know, and correct me if I'm wrong,
7	that meeting about the shifts, so there was	7	you don't know for sure whether you were
8	no discussion between the trustees and	8	there during this report or not?
9	Segal about that language.	9	A. I don't recall this report, so I
10	Q. Okay, so nobody at the meeting	10	assume I wasn't there.
11		11	
12	actually said well, why do you need shifts? A. No.	12	Q. But there are lots of other
13		13	things you don't recall about the meetings
14	Q. Okay, and when are you read it,	14	of the trustees over the years, but you
15	you didn't think it was odd that they were	15	still may have been there, correct?
16	asking for shift information?	16	A. I don't think I was there for
	A. Like I said, no, I have my		this, because of what was being talked
17	thoughts on why they needed it.	17 18	about.
18	Q. Okay, but that wasn't my		Q. And if you became aware of what
19	question.	19	was being talked about, would that have
20	A. No, I did not ask them.	20	caused you to do something?
21	Q. Okay, you didn't ask, you didn't	21	A. It would have caused me to ask
22	think it was odd?	22	maybe some questions.
23	A. No.	23	Q. Okay. And so when you left the
24	Q. And as far as you know, nobody	24	meeting, did anyone else leave with you?
25	else asked?	25	A. No.
	Page 1035		Page 1036
1		1	-
1 2	Hayes - Cross	1 2	Hayes - Cross
	Hayes - Cross Q. Okay. And so		Hayes - Cross correct?
2	Hayes - Cross Q. Okay. And so A. Leave with me to go to my	2	Hayes - Cross correct? A. I don't know, is my answer.
2	Hayes - Cross Q. Okay. And so A. Leave with me to go to my meeting?	2	Hayes - Cross correct? A. I don't know, is my answer. Q. Okay, no, I'm asking you if you
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2 3 4 5	Hayes - Cross Q. Okay. And so A. Leave with me to go to my meeting? Q. Or leave with you, whether A. I don't know who may have left at	2 3 4 5	Hayes - Cross correct? A. I don't know, is my answer. Q. Okay, no, I'm asking you if you have any reason to believe that any of these people above the line where it says
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2 3 4 5 6 7	Hayes - Cross Q. Okay. And so A. Leave with me to go to my meeting? Q. Or leave with you, whether A. I don't know who may have left at the same time I did or after me, I have no idea.	2 3 4 5 6 7	Hayes - Cross correct? A. I don't know, is my answer. Q. Okay, no, I'm asking you if you have any reason to believe that any of these people above the line where it says also present for a portion of the meeting, whether you have any reason to believe that
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	Page 1041		Page 1042
1	Hayes - Cross	1	Hayes - Cross
2	A. I can say that I don't recall	2	A. He'll send the minutes, he'll
3	reviewing those meeting minutes.	3	send the minutes out for review. The time
4	Q. And now, as I understood, you	4	period is flexible when you get it. And
5		5	
6	said during this period of time, this	6	then when we actually get to the meeting,
7	two-month period of time, that you were	7	there is only a set of minutes that need to
8	very busy at work?	8	be signed, we don't get a whole new set of
9	A. Yes.	9	them. So we don't review them again at the
	Q. Okay. Is it incorrect to say	_	meeting.
10	that you're usually pretty busy at work?	10	Q. Right, okay. And when you say
11	A. This was extraordinary because we	11	that Mr. Urbank sends them out or Segal
12	were doing a reduction in force.	12	sends them out for review, to whom do they
13	Q. Okay. And is it your testimony	13	send minutes out to review?
14	that you think you may not have had enough	14	A. I know I get a copy. I believe
15	time to review the minutes of the meeting	15	the attorneys get a copy. I don't know if
16	that occurred on October 11, 2011?	16	it goes to anybody else other than the
17	A. That wasn't my testimony. My	17	trustees.
18	testimony is that I was focused on other	18	Q. Okay. If you look at the
19	issues. So I have no recollection of	19	December 9, 2011 minutes, and it says
20	reading those minutes, or reviewing them.	20	approval of prior minutes on the first
21	Q. Okay. Do you know who took the	21	page.
22	minutes of the meeting?	22	A. Yes.
23	A. Usually Segal takes the minutes.	23	Q. Do you see that?
24	Q. And then what's the process that	24	A. Yes.
25	follows that?	25	Q. And it says the minutes of the
			· · ·
	Page 1043		Page 1044
1	_	1	-
1 2	Hayes - Cross	1 2	Hayes - Cross
2	Hayes - Cross regular meeting held on October 11, 2011	2	Hayes - Cross Q. Did anyone, Mr. Schelberg
2	Hayes - Cross regular meeting held on October 11, 2011 previously distributed by mail were	2	Hayes - Cross Q. Did anyone, Mr. Schelberg let's take Mr. Schelberg, suggest to you
2 3 4	Hayes - Cross regular meeting held on October 11, 2011 previously distributed by mail were reviewed. Do you have any reason to	2 3 4	Hayes - Cross Q. Did anyone, Mr. Schelberg let's take Mr. Schelberg, suggest to you that he that you ought to review the
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2 3 4 5 6	Hayes - Cross regular meeting held on October 11, 2011 previously distributed by mail were reviewed. Do you have any reason to believe that that didn't happen? A. You mean an actual review?	2 3 4 5 6	Hayes - Cross Q. Did anyone, Mr. Schelberg let's take Mr. Schelberg, suggest to you that he that you ought to review the minutes of the October meeting? A. It's standard procedure that we
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	Page 1045		Page 1046
1		1	
2	Hayes - Cross	2	Hayes - Cross MR. MILLER: These minutes or
3	eight, Roman numeral eight in the minutes, it's on page 4 of the minutes, do you see	3	generally?
4	that?	4	Q. Well, in general.
5	A. Yes.	5	A. In general, yes.
6	Q. And by the way, were the minutes,	6	Q. Okay.
7	were they did they go chronologically,	7	A. There are times when we jump
8	that is the first thing that happened at	8	around on the agenda, because really, the
9	the meeting was the first thing that	9	minutes are done after. The agenda at the
10	occurred in the minutes and the same way	10	meeting is what you're really looking at.
11	after that?	11	And so sometimes you move this agenda
12	MR. MILLER: Do you understand	12	around as the meeting is actually taking
13	the question?	13	place. I can't speak to, because I've
14	THE WITNESS: I don't think I	14	never really noticed, if the minutes follow
15	understand his question.	15	what actually happened. So I can't give
16	Q. So the minutes say, there is a	16	you an answer to that.
17	call to order, right? That happened first.	17	Q. At this meeting there was a
18	Do you see that on the first page?	18	well, let's take, if you look at page five
19	A. Yes.	19	of the minutes, and I'm looking at Roman
20	Q. And then it has a Roman numeral 2	20	numeral 10.
21	and 3?	21	A. Yes.
22	A. Yes.	22	Q. Fund office. And there was a
23	Q. And what I'm asking you about is	23	motion made and seconded approving
24	do the minutes actually report the sequence	24	ratifying the August 1, 2011 poll vote
25	of the events that occur at the meeting?	25	approving a three percent wage increase, do
	_		
	Page 1047		Page 1048
1	Page 1047 Hayes - Cross	1	Page 1048 Hayes - Cross
1 2		2	Hayes - Cross A. That's what it says.
	Hayes - Cross you see that? A. Yes.		Hayes - Cross A. That's what it says. Q. And you don't know whether you
2 3 4	Hayes - Cross you see that? A. Yes. Q. Were you there for that vote?	2 3 4	Hayes - Cross A. That's what it says.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Hayes - Cross you see that? A. Yes. Q. Were you there for that vote? A. I don't recall if I was there for the vote. I do recall talking it over with the other management trustee, and I think we did it in a sidebar. But I don't recall being I don't recall if I was there for the actual motion. Q. Because the motion was made, seconded and unanimously adopted ratifying the August 1, 2011 poll vote. Do you know what a poll vote is? A. What it says, you'll get a call, they'll ask you. Q. And this seems to indicate, and tell me if you believe otherwise, this seems to indicate there was an August 1, 2011 poll vote, correct?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Hayes - Cross A. That's what it says. Q. And you don't know whether you were there for this motion? A. Yes, I don't know. Q. And let's turn the page to page 6. And you see it says appeals? A. Yes. Q. And there is a motion made, seconded and unanimously adopted to deny Mr. Iaconi's appeal. Do you see that? A. Yes. Q. Were you there for that vote? A. I don't know. As I said, what usually happens is that we'll move things around. I don't have any specific memory of this particular yes or no. I don't recall. Q. Let's go down to B, again still under appeals. And this had to do with an
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Cross you see that? A. Yes. Q. Were you there for that vote? A. I don't recall if I was there for the vote. I do recall talking it over with the other management trustee, and I think we did it in a sidebar. But I don't recall being I don't recall if I was there for the actual motion. Q. Because the motion was made, seconded and unanimously adopted ratifying the August 1, 2011 poll vote. Do you know what a poll vote is? A. What it says, you'll get a call, they'll ask you. Q. And this seems to indicate, and tell me if you believe otherwise, this seems to indicate there was an August 1, 2011 poll vote, correct? A. Yes. Q. And these are the minutes of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Cross A. That's what it says. Q. And you don't know whether you were there for this motion? A. Yes, I don't know. Q. And let's turn the page to page 6. And you see it says appeals? A. Yes. Q. And there is a motion made, seconded and unanimously adopted to deny Mr. Iaconi's appeal. Do you see that? A. Yes. Q. Were you there for that vote? A. I don't know. As I said, what usually happens is that we'll move things around. I don't have any specific memory of this particular yes or no. I don't recall. Q. Let's go down to B, again still under appeals. And this had to do with an appeal of a participant Joseph Testagrossi? A. Yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Cross you see that? A. Yes. Q. Were you there for that vote? A. I don't recall if I was there for the vote. I do recall talking it over with the other management trustee, and I think we did it in a sidebar. But I don't recall being I don't recall if I was there for the actual motion. Q. Because the motion was made, seconded and unanimously adopted ratifying the August 1, 2011 poll vote. Do you know what a poll vote is? A. What it says, you'll get a call, they'll ask you. Q. And this seems to indicate, and tell me if you believe otherwise, this seems to indicate there was an August 1, 2011 poll vote, correct? A. Yes. Q. And these are the minutes of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Cross A. That's what it says. Q. And you don't know whether you were there for this motion? A. Yes, I don't know. Q. And let's turn the page to page 6. And you see it says appeals? A. Yes. Q. And there is a motion made, seconded and unanimously adopted to deny Mr. Iaconi's appeal. Do you see that? A. Yes. Q. Were you there for that vote? A. I don't know. As I said, what usually happens is that we'll move things around. I don't have any specific memory of this particular yes or no. I don't recall. Q. Let's go down to B, again still under appeals. And this had to do with an appeal of a participant Joseph Testagrossi? A. Yes.

		1	
	Page 1049		Page 1050
1	Hayes - Cross	1	Hayes - Cross
2	deny Mr. Testagrossi's appeal subject to	2	Q. I'm asking you whether you have a
3	the union trustees' further review of the	3	recollection.
4	appeal, do you see that?	4	A. No, I don't. I have no specific
5	A. Yes.	5	recollection.
6	Q. Were you there for that vote?	6	Q. Okay. Do you know what a quorum
7	A. I don't know. As I said, there	7	is?
8	are times when we moved things around, and	8	A. Yes.
9	so I don't know if Murray might have asked	9	Q. What is it?
10	us at the beginning knowing I had to leave,	10	A. It's the minimum number required
11	so I don't recall.	11	to hold the meeting.
12	Q. Had you told others who were	12	Q. And do you know what the quorum
13	attending the meeting that you had to leave	13	requirement for the Pension Fund is?
14	the meeting early?	14	A. No.
15	A. Most of the occasions when I know	15	Q. Let me see if maybe I can jog
16	that I have another meeting to go to, I	16	your memory here. Let's take a look at
17	will let it be known early.	17	Exhibit 47. It's in the red book, or
18	Q. But that's not the question I	18	orange binder, 47. So do you know what
19	asked you.	19	this document is?
20	A. The answer is probably.	20	A. It looks to be a copy of the plan
21	Q. But you have no recollection of	21	document.
22	telling people that you were leaving this	22	Q. The agreement and declaration of
23	meeting earlier?	23	trust?
24	A. It is my normal practice to tell	24 25	A. Yes.
25	people that.	25	Q. Do you know the difference
	Page 1051		Page 1052
1	Page 1051	1	Page 1052
1	Hayes - Cross	1	Hayes - Cross
2	Hayes - Cross between an agreement and declaration of	2	Hayes - Cross was a quorum present if you left the
2	Hayes - Cross between an agreement and declaration of trust and the plan document?	2	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct
2 3 4	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes.	2 3 4	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business?
2 3 4 5	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes. Q. Can you tell us what that is?	2 3 4 5	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business? A. According to this there shouldn't
2 3 4 5 6	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes. Q. Can you tell us what that is? A. The plan document speaks to the	2 3 4 5	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business? A. According to this there shouldn't have been.
2 3 4 5 6 7	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes. Q. Can you tell us what that is? A. The plan document speaks to the plan, what the requirements are,	2 3 4 5 6 7	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business? A. According to this there shouldn't have been. (Recess taken: 12:14-12:39 p.m.)
2 3 4 5 6 7 8	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes. Q. Can you tell us what that is? A. The plan document speaks to the plan, what the requirements are, participants and that sort of thing. This	2 3 4 5 6 7 8	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business? A. According to this there shouldn't have been. (Recess taken: 12:14-12:39 p.m.) FURTHER CROSS-EXAMINATION BY MR. RICHMAN:
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes. Q. Can you tell us what that is? A. The plan document speaks to the plan, what the requirements are, participants and that sort of thing. This is the agreement to establish the plan. Q. And to govern the plan, is that fair to say? A. Yes. Q. And to govern the plan, okay. So let's take a look at page 28. A. Got it. Q. And in section 6.2, and I'm sorry, 6.3, the section entitled quorum. A. Yes. Q. And it says that the quorum for transaction of business at any regular or special meeting of the trustees shall consist of two union trustees and two	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business? A. According to this there shouldn't have been. (Recess taken: 12:14-12:39 p.m.) FURTHER CROSS-EXAMINATION BY MR. RICHMAN: Q. Alright, let's go back to Exhibit 129 for a different reason. And you were present at this meeting, correct? A. Yes, I'm listed as being there. Q. Do you have any recollection of being there? A. No recollection. Q. Let's turn to page 7. I understood your testimony the first time you testified that there was no discussion at the meetings as to other employers' contribution obligations. Is that your testimony today? MR. MILLER: Objection.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes. Q. Can you tell us what that is? A. The plan document speaks to the plan, what the requirements are, participants and that sort of thing. This is the agreement to establish the plan. Q. And to govern the plan, is that fair to say? A. Yes. Q. And to govern the plan, okay. So let's take a look at page 28. A. Got it. Q. And in section 6.2, and I'm sorry, 6.3, the section entitled quorum. A. Yes. Q. And it says that the quorum for transaction of business at any regular or special meeting of the trustees shall	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business? A. According to this there shouldn't have been. (Recess taken: 12:14-12:39 p.m.) FURTHER CROSS-EXAMINATION BY MR. RICHMAN: Q. Alright, let's go back to Exhibit 129 for a different reason. And you were present at this meeting, correct? A. Yes, I'm listed as being there. Q. Do you have any recollection of being there? A. No recollection. Q. Let's turn to page 7. I understood your testimony the first time you testified that there was no discussion at the meetings as to other employers' contribution obligations. Is that your testimony today? MR. MILLER: Objection. THE ARBITRATOR: I'm sorry, I
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Cross between an agreement and declaration of trust and the plan document? A. Yes. Q. Can you tell us what that is? A. The plan document speaks to the plan, what the requirements are, participants and that sort of thing. This is the agreement to establish the plan. Q. And to govern the plan, is that fair to say? A. Yes. Q. And to govern the plan, okay. So let's take a look at page 28. A. Got it. Q. And in section 6.2, and I'm sorry, 6.3, the section entitled quorum. A. Yes. Q. And it says that the quorum for transaction of business at any regular or special meeting of the trustees shall consist of two union trustees and two employer trustees. Do you see that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Cross was a quorum present if you left the meeting for the other trustees to conduct business? A. According to this there shouldn't have been. (Recess taken: 12:14-12:39 p.m.) FURTHER CROSS-EXAMINATION BY MR. RICHMAN: Q. Alright, let's go back to Exhibit 129 for a different reason. And you were present at this meeting, correct? A. Yes, I'm listed as being there. Q. Do you have any recollection of being there? A. No recollection. Q. Let's turn to page 7. I understood your testimony the first time you testified that there was no discussion at the meetings as to other employers' contribution obligations. Is that your testimony today? MR. MILLER: Objection.

	Page 1053	Page 1054
1	Hayes - Cross	1 Hayes - Cross
2	MR. RICHMAN: The questioning	shift guarantee pertaining to the Pension
3	was about his prior testimony about	³ Fund?
4	the lack of discussion about other	⁴ A. I see that.
5	employers' contribution obligations.	⁵ Q. Were you present during that
6	Q. And I'm happy to go back to page	6 discussion?
7	196 of his hearing transcript, and at line	A. I have no reason to I don't
8	17.	8 know. I will say that I have no reason to
9	"Question: Now, do you know, or	9 think that I wasn't there for that.
10	did you ever know how other employers	Q. And did you raise a question
11	contributing to the Pension Fund	about shift guaranties?
12	contributed?	¹² A. No.
13	"Answer: No.	Q. Did anyone else at the meeting
14	"Question: Okay, so as a trustee	raise a question about shift guaranties?
15	you never inquired into that?	¹⁵ A. Not that I recall.
16	"Answer: As a trustee it never	Q. Did anyone else at the meeting
17	came up at any trustee meeting as to	including yourself raise a question about
18	how they were doing it. I only know	how Hudson News distributors contributed to
19	how we were doing it."	the Pension Fund?
20	THE ARBITRATOR: Okay, what's	A. Not to my knowledge, no.
21	your question?	Q. Now let's take a look at
22	Q. Let's take a look at the F, above	Exhibit 130, please. I'm sorry, let's go
23	Hudson News, minimum contributions. And	back to just for one more question back
24 25	you see it talks about Hudson News	to the November 21, 2008 Exhibit
23	distributors in connection with a minimum	²⁵ 129 minutes.
	Page 1055	Dago 1056
	Page 1055	Page 1056
1	Hayes - Cross	¹ Hayes - Cross
2	Hayes - Cross A. Okay.	Hayes - Cross paragraph titled E in these minutes?
2 3	Hayes - Cross A. Okay. Q. Is that your signature on page 8	Hayes - Cross paragraph titled E in these minutes? A. I don't recall asking any
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Hayes - Cross A. Okay. Q. Is that your signature on page 8 of the minutes? A. Yes. Q. So you read these minutes before you signed them? A. Yes. Q. Okay. So let's go to Exhibit 130. Were you at this meeting? A. I have no reason to think I wasn't. My name is listed. Q. Alright, and let's take a look at page 5 of the minutes. And if you could read that please to yourself. A. Okay. Q. Were you present during this discussion? A. I have no reason to believe I wasn't. Q. Okay, did you ask any questions about the Pension Fund, Mr. Schwartz's report? Sorry, let's withdraw that.	Hayes - Cross paragraph titled E in these minutes? A. I don't recall asking any questions about that. Q. Did anyone else ask any questions about this? A. I don't recall. Q. And let's take a look at the last page of the minutes before the exhibits, and that's page 7. A. Yes. Q. Is that your signature? A. Yes, it is. Q. And did you read these minutes before you signed them? A. I would think I reviewed these minutes either when they mailed them out or glanced through them when I signed it. Q. Okay, but you would have read them before you signed them? A. Yes. Q. Let's go to Exhibit 138, please. And were you present at this meeting?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hayes - Cross A. Okay. Q. Is that your signature on page 8 of the minutes? A. Yes. Q. So you read these minutes before you signed them? A. Yes. Q. Okay. So let's go to Exhibit 130. Were you at this meeting? A. I have no reason to think I wasn't. My name is listed. Q. Alright, and let's take a look at page 5 of the minutes. And if you could read that please to yourself. A. Okay. Q. Were you present during this discussion? A. I have no reason to believe I wasn't. Q. Okay, did you ask any questions about the Pension Fund, Mr. Schwartz's	Hayes - Cross paragraph titled E in these minutes? A. I don't recall asking any questions about that. Q. Did anyone else ask any questions about this? A. I don't recall. Q. And let's take a look at the last page of the minutes before the exhibits, and that's page 7. A. Yes. Q. Is that your signature? A. Yes, it is. Q. And did you read these minutes before you signed them? A. I would think I reviewed these minutes either when they mailed them out or glanced through them when I signed it. Q. Okay, but you would have read them before you signed them? A. Yes. Q. Let's go to Exhibit 138, please. And were you present at this meeting?

Page 105	77 Page 1058
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11ay cs - C1033	114 y cs - C1035
Q. Okay, so let's take a look at	miormation:
page 2. Take a fook at the sotion of	71. Tiot to my reconcedion.
page 2.	Q. Let's go to Exilibit 113. Were
11. 103.	you prosent at this mooting.
Q. Allight. And it says wit. Murphy	A. I am fisted as being there, yes.
requested that segai provide the trustees	Q. Okay, any reason to believe you
with a report setting forth the projected,	weren t mere:
and I in hipping the page, contributions	71. There is no reason for the to
bused on contribution rates under the	believe I was not there.
default selledules and estimated shift	Q. This let's hip to page four,
totals through 2020 for the three largest	preuse.
contributing employers to pension plan.	A. 1 cs.
were you mere when wir. Murphy	Q. And you see Roman numeral 4, El
asked this question, or made this request?	Diario mistaken contributions, do you see
A. I don't have any specific	that?
recollection, but I was probably there.	17 A. Yes, I do.
Q. Okay, is there any reason to	Q. Could you read that to yourself,
believe you left the meeting early?	picase.
20 A. No.	A. Yes.
Q. And did you ask Mr. Murphy why l	Q. 50 Wit. Sellwartz is giving this
wanted this information?	report on El Diario and contributions,
23 A. No.	contect:
Q. Did anybody else at the meeting	A. Yes.
ask Mr. Murphy why he wanted this	Q. Okay, and he reported that El
Page 105	Page 1060
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¹ Hayes - Cross	¹ Hayes - Cross
 Hayes - Cross Diario had overpaid its contributions, is 	Hayes - Cross due, and then it says and further
Hayes - Cross Diario had overpaid its contributions, is that correct? I'm looking at the second	Hayes - Cross due, and then it says and further authorized El Diario to take a credit for
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	Page 1061		Page 1062
1	_	1	_
1 2	Hayes - Cross A. No.	2	Hayes - Cross
3	Q. Okay. Now, at the bottom of that	3	A. I have no reason to think I didn't.
4	paragraph there was a motion that was made,	4	Q. And can you tell us why you voted
5	seconded and unanimously adopted to the	5	for it?
6	first part is to refund the employee, the	6	A. They had paid in excess of five
7	mistaken self-payments, also made to the	7	shifts a week in their calculation of their
8	Welfare Fund, and it says to allow the	8	contribution, their percentage, so they
9	employer to take a credit for the	9	were over the limit of five shifts. That's
10	erroneously paid shifts to the Funds on its	10	all we pay on. So it was, if you will,
11	next contribution payment due to the Funds.	11	whatever those wages associated with that
12	Do you see that?	12	shift, that was it. I understood that.
13	A. Yes, I do.	13	Both the employee and the employer had paid
14	Q. And you voted for that?	14	on the sixth shift.
15	A. Yes.	15	Q. So let's go down to Roman numeral
16	MR. MILLER: Well, do you	16	five. Do you see that? Mr. Carl Giordano,
17	remember?	17	Hudson News settlement?
18	MR. RICHMAN: No, no, excuse	18	A. Yes.
19	me, I'm on a cross-examination here.	19	Q. And I'm focused on E, but feel
20	THE WITNESS: I probably voted	20	free to read the whole thing if you like.
21 22	for that, yes.	21 22	A. Focused on?
23	Q. Do you have any reason to believe	23	Q. E, little E. You see that, where
24	that this, the description of the motion made, seconded and unanimously adopted	24	it says, had Mr. Giordano not been
25	includes you voting in favor of it?	25	wrongfully discharged, he would have been
	merades you voting in lavor of it:		working, and on that basis Hudson is
	Page 1063		Page 1064
1		1	
1 2	Page 1063 Hayes - Cross willing to pay pension and welfare shifts	1 2	Page 1064 Hayes - Cross I thought everyone else understood.
	Hayes - Cross willing to pay pension and welfare shifts as necessary to get him back to the point		Hayes - Cross
2 3 4	Hayes - Cross willing to pay pension and welfare shifts as necessary to get him back to the point at which he can retire with a disability	2 3 4	Hayes - Cross I thought everyone else understood. Q. And what was your understanding? A. The employees get credit for
2 3 4 5	Hayes - Cross willing to pay pension and welfare shifts as necessary to get him back to the point at which he can retire with a disability pension from the Fund. Do you recall this	2 3 4 5	Hayes - Cross I thought everyone else understood. Q. And what was your understanding? A. The employees get credit for eligibility based on the number of shifts
2 3 4 5 6	Hayes - Cross willing to pay pension and welfare shifts as necessary to get him back to the point at which he can retire with a disability pension from the Fund. Do you recall this discussion?	2 3 4 5 6	Hayes - Cross I thought everyone else understood. Q. And what was your understanding? A. The employees get credit for eligibility based on the number of shifts that they work or are paid for. This was
2 3 4 5 6 7	Hayes - Cross willing to pay pension and welfare shifts as necessary to get him back to the point at which he can retire with a disability pension from the Fund. Do you recall this discussion? A. Not specifically, but I'm sure I	2 3 4 5 6 7	Hayes - Cross I thought everyone else understood. Q. And what was your understanding? A. The employees get credit for eligibility based on the number of shifts that they work or are paid for. This was to make them qualify for that benefit.
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	Dago 1065		Daga 1066
4	Page 1065	1	Page 1066
1	Hayes - Cross	1	Hayes - Cross
2	idea and there was no discussion about how,	2 3	signature of the employer trustee in the
3	what it was based on, it just said shifts.	4	minutes, is that your signature?
4	But it was an eligibility issue.	5	A. Yes, it is.
5	Q. Well, it's eligibility for the	6	Q. Did you read these minutes before
6	employee.	7	you signed them?
7	A. Employee, yes.	8	A. I read these minutes when they
8 9	Q. But a contribution for the	9	were distributed and just reviewed them
10	employer, correct?	10	when I signed them.
11	A. Yes.	11	Q. So you had read them before you
12	Q. Now, if you'll flip the page,	12	signed them? A. Yes.
13	you'll see there was a motion made, this is	13	
14	on page 5.	14	Q. Okay, thank you. Okay, let's go
15	A. Yes.	15	to 146 please. And this is our friend
16	Q. Seconded and unanimously adopted	16	Mr. Giordano again.
17	to accept such contributions from Hudson	17	A. Yes.
18	News and award Mr. Giordano disability	18	Q. Were you present at this meeting?A. It says I was there; I have no
19	pension subject to Hudson News contributing	19	
	on the required number of shifts as	20	reason to believe I wasn't.
20 21	determined by the Fund Office, do you see	21	Q. Do you remember attending the
22	that?	22	meeting?
23	A. Yes.	23	A. As I said, I don't have any
	Q. And you voted for those?	24	specific recollection, but it says I was
24	A. Yes.	25	there; I have no reason to believe I wasn't
25	Q. And if you look down at the	23	there.
	Page 1067		Page 1068
1		1	_
1 2	Hayes - Cross	1 2	Hayes - Cross
	Hayes - Cross Q. You're welcome to read the whole		Hayes - Cross I did or did not.
2	Hayes - Cross Q. You're welcome to read the whole description. I'm going to focus on the	2	Hayes - Cross I did or did not. Q. Do you recall being at this
2	Hayes - Cross Q. You're welcome to read the whole description. I'm going to focus on the about two thirds of the way down where it	2 3	Hayes - Cross I did or did not. Q. Do you recall being at this discussion?
2 3 4	Hayes - Cross Q. You're welcome to read the whole description. I'm going to focus on the about two thirds of the way down where it starts with Mr. Bluestein noted the	2 3 4	Hayes - Cross I did or did not. Q. Do you recall being at this discussion? A. Not specifically, but I have no
2 3 4 5	Hayes - Cross Q. You're welcome to read the whole description. I'm going to focus on the about two thirds of the way down where it starts with Mr. Bluestein noted the trustees agreed at the September 12th	2 3 4 5	Hayes - Cross I did or did not. Q. Do you recall being at this discussion? A. Not specifically, but I have no reason to think I wasn't.
2 3 4 5 6	Hayes - Cross Q. You're welcome to read the whole description. I'm going to focus on the about two thirds of the way down where it starts with Mr. Bluestein noted the	2 3 4 5 6	Hayes - Cross I did or did not. Q. Do you recall being at this discussion? A. Not specifically, but I have no reason to think I wasn't. Q. Okay, do you have any reason that
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	Page 1069		Page 1070
1 Hayes - C	ross	1	Hayes - Redirect
2 page to page 2, do	you see page 2?	2	MR. RICHMAN: We're finished.
³ A. Yes, I do.		3	MR. MILLER: Just a couple of
4 Q. And there's	a motion made, and	4	minutes; we will have a small amount
5 the motion was ma	de, seconded and	5	of redirect.
6 unanimously adopt	ed to required Hudson News	6	(Recess taken: 1:03-1:15 p.m.)
7 to contribute to the	Pension and Welfare	7	REDIRECT EXAMINATION BY MR. MILLER:
8 Funds for a hundre	d shifts in the accrual	8	Q. Mr. Hayes, in connection with
9 year February 1, 20	012, do you see that?	9	your cross-examination testimony with
10 A. Yes, I do.		10	Mr. Richman, there was a discussion of a
11 Q. And you vo	ted for that?	11	recent sixer contribution, do you remember
12 A. Yes. I have	no recollection, but	12	that?
¹³ I'm sure I did.		13	A. Yes.
Q. Okay, and Q	lid you raise a	14	Q. And I just want to clarify for
15 question about Hu	lson News contributing to	15	the record, the sixer contribution is made
the Pension Fund f	or a hundred shifts?	16	to which Fund?
¹⁷ A. No, because	e I understood what it	17	A. The Welfare Fund.
was for.		18	Q. And there was mention of Neil
19 Q. And let's ju	st flip to page 3,	19	Schelberg in your cross-examination, and I
	exhibit. Is that your	20	want to ask you, is Mr. Schelberg a lawyer
signature?	3	21	for The New York Times?
A. Yes, it is.		22	A. No, he's not.
Q. And did yo	a read these minutes	23	Q. There was some testimony in
before you signed	hem?	24	connection with your cross-examination
A. Yes, I did.		25	about minimum shift guarantees. Does The
	Page 1071		Page 1072
¹ Hayes - R	edirect	1	Hayes - Recross
11ay cs - 1	have a minimum shift	2	a year?
	e union relating to	3	A. Yes.
Saarantee with th	he Pension Fund?	4	Q. And do you need a certain number
5 A. No, we do		5	of pension accruals to be eligible for a
71. 110, WC ut	sperience as a trustee	6	pension?
Q. III your cz	and, do trustees ever	7	A. Yes.
	tings during the course of	8	MR. MILLER: I have nothing
the meeting?	tings during the course of	9	else.
10 A. Yes.		10	RECROSS-EXAMINATION BY MR. RICHMAN:
	n does this occur?	11	Q. Mr. Hayes, you mentioned that it
_	s quite often. They may	12	happens quite often that people may leave
71. It happen	ne entire meeting, but	13	for part of the meeting, correct?
	step out to do conference	14	A. Yes.
calls and that sor		15	Q. And I just want to make sure I
caris and that sor	ly, are you generally	16	understand your testimony. You say they
	rules to be eligible for	17	may not be gone for the entire meeting, but
Tuttitiut With the	he NMDU Fund?	18	they may have to step out to do conference
19 A. Generally		19	calls and that sort of thing?
11. Generally	ou briefly describe the	20	A. Yes.
Q. Tilla call	ligibility for that?	21	Q. Is it unusual for somebody to
		22	leave the meeting in the middle of the
	EIIIDIOVEE WIIO WOIKS A		
A. Yes. An		23	
A. Yes. An hundred shifts wi	Il receive a pension	23 24	meeting and not come back?
A. Yes. An hundred shifts wind accrual for that y	Il receive a pension		

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Page 1073	Page 1074
Hayes - Recross have testified you did that on October 11th of 2011, was there another time that you left the meeting early and didn't come back? A. Not that I recall off the top of my head. I was focused on that because it was pointed out to me. MR. RICHMAN: That's all. MR. MILLER: Mr. Hayes, thank you. Luncheon adjournment: 1:20 p.m.) Luncheon adjournment: 1:20 p.m.)	Egan - Cross AFTERNOON SESSION (Time noted: 2:15 p.m.) ROSANA EGAN, recalled as a witness, having previously been duly sworn, was further examined and testified as follows: CONTINUED CROSS-EXAMINATION BY MR. MILLER: Q. Good afternoon, Ms. Egan. I'm going to be asking you a variety of questions that relate to the documents that you'll find in that yellow binder. I'm going to be splitting the questions into two categories. One category is questions that relate frankly to the second issue in the case, the Segal blend, and the other sets of questions will relate to the contribution base unit issue. And that means that we will not be going in chronological order in regard to the documents. But I think this will make the process easier to understand and we'll get through it more quickly.
25	Let me ask you a couple of foundational questions before we get into
Page 1075	Page 1076
the documents. During your time as actuary for the NMDU Fund, you selected a 7.5 percent rate as the investment return assumption for the Fund, correct? A. For a portion of the time. I'm not sure if it's the whole time as the actuary. I don't remember going back to day one. Q. But certainly in the more recent years you had selected a 7.5 rate as the investment return assumption, correct? A. Yes. Q. And you also used the 7.5 percent rate as the discount rate to value the plan's liabilities for funding purposes, correct? A. Yes. Q. And once you set a discount rate and an investment return assumption, do you review the continued use of that particular selected rate annually or with some frequency? A. Yes. Q. Do you in fact review it	Egan - Cross annually? A. Yes. Q. And generally when you go about setting an investment return assumption for a multi-employer plan, do you review the multi-employer plan's investment policy statement and take account of how the assets are targeted to be invested? A. We would use as part of the process what their target asset allocation would be. Q. So the answer to my question is yes in part, and as part of the process you would take account of how the assets are targeted to be invested, correct? A. Yes. Q. Okay, and specifically in the case of the NMDU Fund in setting the 7.5 percent assumption for future investment returns, did you examine the NMDU Fund's investment policy statement? A. I don't remember off the top of my head if I looked at the policy statement.

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	Page 1077		Page 1078
1	Egan - Cross	1	Egan - Cross
2	Q. Did you review the NMDU Fund's	2	I know it's a fairly lengthy document; my
3 t	argeted asset allocations?	3	questions are going to be rather limited;
4	A. I would have gotten the target	4	but take a moment or two to familiarize
5 a	allocation.	5	yourself with the document.
6	Q. And reviewed them?	6	Let me ask you, have you ever
7	A. I might have just gotten, you	7	seen this document before?
8 1 ,	know, 20 percent is in this kind of assets,	8	A. I don't remember if I've ever
	30 percent is in this kind. It might have	9	seen this before.
	been not the whole report necessarily.	10	Q. Do you remember seeing the
11	Q. But the information would have	11	investment policy statement for the NMDU
12 l	been obtained and used in the development	12	Fund?
	of the rate?	13	A. I'm not sure when you say
14	A. Yes.	14	investment policy statement, is that this
15	Q. Okay, so with that as background,	15	report?
16 1	et's turn to what's numbered as	16	Q. Well, you just testified that you
	Exhibit 120 in this yellow binder. I'm not	17	don't recall reviewing this document.
	going to ask you about the minutes and	18	A. I don't remember. I don't
	agenda for the minutes contained within	19	remember if I did or didn't.
	his exhibit. Instead if you turn to a	20	Q. So I'm going to ask you more
	document on the bottom right, 3263, which	21	broadly, do you remember reviewing an
	s also labelled Exhibit C to these	22	investment policy statement for the NMDU?
	minutes, it's a statement of investment	23	A. Not specifically.
	objectives and policy. That's the document	24	Q. Why don't I draw your attention
	hat I'm going to call to your attention.	25	back to page 3053. And Ms. Egan, there is
	<i>5 5</i>		
	Page 1079		Page 1080
1		1	-
1 2 3	Egan - Cross	1 2	Egan - Cross
2 a	Egan - Cross a reference to a person named Mark	2	Egan - Cross return assumption.
2 a 3 I	Egan - Cross a reference to a person named Mark Lotruglio as being present for that	2 3	Egan - Cross return assumption. A. Okay.
2 a 3 I 4 r	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that	2 3 4	Egan - Cross return assumption. A. Okay. Q. So this statement says that over
2 a 3 I 4 r 5 N	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest	2 3 4 5	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author
2 a 3 I 4 r 5 N	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest Consultants, do you see that?	2 3 4	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author says is three to five years, the total Fund
2 2 3 I 4 r 5 N	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest Consultants, do you see that? A. Yes.	2 3 4 5 6 7	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author says is three to five years, the total Fund is expected to perform above the actuarial
2 8 3 I 1 5 N 6 (7 8	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest Consultants, do you see that? A. Yes. Q. And am I correct that Quan-Vest	2 3 4 5 6 7 8	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author says is three to five years, the total Fund is expected to perform above the actuarial assumption of 7.5 percent for investment
2	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest Consultants, do you see that? A. Yes. Q. And am I correct that Quan-Vest Consultants is and was the investment	2 3 4 5 6 7 8 9	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author says is three to five years, the total Fund is expected to perform above the actuarial assumption of 7.5 percent for investment return net of investment expenses.
2	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest Consultants, do you see that? A. Yes. Q. And am I correct that Quan-Vest Consultants is and was the investment advisor to this Fund?	2 3 4 5 6 7 8 9	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author says is three to five years, the total Fund is expected to perform above the actuarial assumption of 7.5 percent for investment return net of investment expenses. Based on your experience as the
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2	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest Consultants, do you see that? A. Yes. Q. And am I correct that Quan-Vest Consultants is and was the investment advisor to this Fund? A. Yes. Q. And Mr. Lotruglio works at Quan-Vest Consultants? A. My understanding. Q. Yes. I recognize that you don't recall seeing this document in particular. Nonetheless, I do want you to look at page 3265, this document being the policy statement. Take a look at page 3265, which s the second page of this investment policy statement. A. Okay. Q. And can you read to yourself what	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author says is three to five years, the total Fund is expected to perform above the actuarial assumption of 7.5 percent for investment return net of investment expenses. Based on your experience as the NMDU Fund's actuary, do you have any judgment on the accuracy of this statement in terms of how the Fund's assets were intended to perform? A. Can you repeat the question again? (The pending question was read.) THE WITNESS: No. Q. Do you have any reason to believe that this statement was inaccurate? A. No. Q. Let's now turn to Exhibit 127. These are minutes from a meeting of
2	Egan - Cross a reference to a person named Mark Lotruglio as being present for that meeting, and it's referenced that Mr. Lotruglio is with Quan-Vest Consultants, do you see that? A. Yes. Q. And am I correct that Quan-Vest Consultants is and was the investment advisor to this Fund? A. Yes. Q. And Mr. Lotruglio works at Quan-Vest Consultants? A. My understanding. Q. Yes. I recognize that you don't recall seeing this document in particular. Nonetheless, I do want you to look at page 3265, this document being the policy statement. Take a look at page 3265, which s the second page of this investment policy statement. A. Okay.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross return assumption. A. Okay. Q. So this statement says that over a complete market cycle, which the author says is three to five years, the total Fund is expected to perform above the actuarial assumption of 7.5 percent for investment return net of investment expenses. Based on your experience as the NMDU Fund's actuary, do you have any judgment on the accuracy of this statement in terms of how the Fund's assets were intended to perform? A. Can you repeat the question again? (The pending question was read.) THE WITNESS: No. Q. Do you have any reason to believe that this statement was inaccurate? A. No. Q. Let's now turn to Exhibit 127.

	Page 1081		Page 1082
1	Egan - Cross	1	Egan - Cross
2	present individuals, aside from the	2	Q. Great. And then you, or the
3	trustees, it indicates that you attended	3	minutes go on to say that should all
4	and Mr. Urbank attended, do you see that?	4	assumptions be reached, including the
5	A. Yes. The entire minutes?	5	7.5 percent investment assumption, a
6	Q. Yes, it's only six pages, and let	6	projection of the funding standard account
7	me tell you why. I'd like you to take a	7	credit balance shows no deficiency for
8	look at the minutes and see if they refresh	8	30 years, do you see that?
9	your recollection about whether you recall	9	A. Yes.
10		10	
11	attending this meeting. Go ahead. Did you	11	Q. And then in on the next page,
12	attend this meeting?	12	on the top paragraph, there is a notation
13	A. It looks like I did.	13	that the Segal representatives then
14	Q. Do you have any reason to believe	14	reviewed the valuation relating to the
15	did you not attend this meeting?		Pension Protection Act, and they noted the
	A. No, I have no reason to believe	15	Pension Protection Act funded ratio, do you
16	that.	16	see that?
17	Q. Alright, let's focus on page 2 of	17	A. Yes.
18	the minutes, and the text under a heading	18	Q. Let me ask you this question. In
19	that's Roman numeral 5, Consultant's	19	connection with the NMDU Fund, did you have
20	Report. And the second paragraph under	20	to make annual projections of the funded
21	Consultant's Report talks but having noted	21	percentage for Pension Protection Act
22	the funding standard account credit balance	22	purposes?
23	and how it was performing. Do you see	23	A. Yes.
24	that?	24	Q. And that was in order for you to
25	A. Yes.	25	certify what particular zone the Fund would
	Page 1083		Page 1084
1		1	
1 2	Egan - Cross	1 2	Egan - Cross
	Egan - Cross be in for Pension Protection Act	2	Egan - Cross the NMDU Fund based on a variety of
2	Egan - Cross be in for Pension Protection Act requirements, correct?		Egan - Cross the NMDU Fund based on a variety of different objectives, right?
2	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes.	2	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes.
2 3 4	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work,	2 3 4	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart?
2 3 4 5	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage,	2 3 4 5	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably.
2 3 4 5 6 7	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate	2 3 4 5 6 7	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to
2 3 4 5 6	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct?	2 3 4 5 6	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart?
2 3 4 5 6 7 8	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes.	2 3 4 5 6 7 8	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No.
2 3 4 5 6 7 8 9	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act	2 3 4 5 6 7 8 9	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far
2 3 4 5 6 7 8 9 10	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular	2 3 4 5 6 7 8 9 10	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded
2 3 4 5 6 7 8 9 10 11	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for	2 3 4 5 6 7 8 9 10 11	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column
2 3 4 5 6 7 8 9 10 11 12 13	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification	2 3 4 5 6 7 8 9 10 11 12 13	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different
2 3 4 5 6 7 8 9 10 11 12 13 14	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination?	2 3 4 5 6 7 8 9 10 11 12 13	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with that requirement a 7.5 rate, correct, the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am I right, explain in more detail what each
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with that requirement a 7.5 rate, correct, the funding assumption? You chose a	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am I right, explain in more detail what each of these purposes are, is that right?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with that requirement a 7.5 rate, correct, the funding assumption? You chose a 7.5 percent rate? Yes or no.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am I right, explain in more detail what each of these purposes are, is that right? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with that requirement a 7.5 rate, correct, the funding assumption? You chose a 7.5 percent rate? Yes or no. A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am I right, explain in more detail what each of these purposes are, is that right? A. Yes. Q. So for example to take the first
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with that requirement a 7.5 rate, correct, the funding assumption? You chose a 7.5 percent rate? Yes or no. A. Yes. Q. Now I'd like you to turn to what's labelled Exhibit C to these minutes,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am I right, explain in more detail what each of these purposes are, is that right? A. Yes. Q. So for example to take the first horizontal line which begins zone certification, the funded percentage for
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with that requirement a 7.5 rate, correct, the funding assumption? You chose a 7.5 percent rate? Yes or no. A. Yes. Q. Now I'd like you to turn to what's labelled Exhibit C to these minutes, and it's at Fund 3315. This is a chart	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am I right, explain in more detail what each of these purposes are, is that right? A. Yes. Q. So for example to take the first horizontal line which begins zone certification, the funded percentage for zone certification purposes in 2007 is
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross be in for Pension Protection Act requirements, correct? A. Yes. Q. And in connection with that work, that annual projection funded percentage, you used 7.5 percent as the discount rate to value the plan's liabilities, correct? A. Yes. Q. Does the Pension Protection Act require an actuary to use a particular discount rate to value vested benefits for purposes of zone certification determination? A. They require you to use reasonable assumptions. Q. And you chose consistent with that requirement a 7.5 rate, correct, the funding assumption? You chose a 7.5 percent rate? Yes or no. A. Yes. Q. Now I'd like you to turn to what's labelled Exhibit C to these minutes,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross the NMDU Fund based on a variety of different objectives, right? A. Yes. Q. And did you prepare this chart? A. Most probably. Q. You don't have any reason to believe you did not prepare this chart? A. No. Q. And you'll notice on the far right columns there are enumerated funded percentages and then on the far left column there is an identification of the different purposes for which the funded percentage is derived, do you see that? A. Yes. Q. Okay. And then the footnotes, am I right, explain in more detail what each of these purposes are, is that right? A. Yes. Q. So for example to take the first horizontal line which begins zone certification, the funded percentage for

		1	
	Page 1085		Page 1086
1	Egan - Cross	1	Egan - Cross
2	A. Yes.	2	assumption, correct?
3	Q. And this would be the annual zone	3	A. Yes.
4	certification that we just talked about a	4	Q. And where did that 5.81 percent
5	moment ago required by the Pension	5	number come from?
6	Protection Act, correct?	6	A. It was in a range that was it
7	A. Yes.	7	was within a range that is promulgated by
8	Q. And am I correct that if you look	8	the government.
9	at the notes, they indicate that for zone	9	Q. So it's dictated by statutory
10	certification, annual funding and	10	requirements?
11	accumulated liability purposes, you used a	11	A. That it be within a certain
12	7.5 percent discount rate to value	12	range.
13	investment returns and liabilities?	13	Q. And was 7.5 percent in that
14	A. Yes.	14	range?
15	Q. And why was the 7.5 percent	15	A. No.
16	figure used for all three of these	16	Q. And then finally there is the
17	purposes?	17	withdrawal liability measure, and the
18	A. Because it's an ongoing plan and	18	withdrawal liability measure was calculated
19	it's the long-term assumption.	19	using the Segal blend to value liabilities,
20	Q. The long-term return assumption?	20	is that correct?
21	A. Yes.	21	A. Yes.
22	Q. And am I correct that for ERISA	22	Q. And no other of the measures on
23	reporting and PFEA reporting purposes, you	23	this page relies on the Segal blend,
24	did not use a 7.5 percent investment return	24	correct?
25	assumption, but a 5.81 percent return	25	A. Correct.
	Page 1087		Page 1088
1		1	
1 2	Egan - Cross		Egan - Cross
2	Egan - Cross Q. So the Segal blend is uniquely	1 2 3	Egan - Cross page 2 of the minutes under the heading of
	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability	2	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do
2	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct?	2 3	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that?
2 3 4	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes.	2 3 4	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes.
2 3 4 5	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the	2 3 4 5	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth
2 3 4 5 6	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require	2 3 4 5 6	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that
2 3 4 5 6 7	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit	2 3 4 5 6 7	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment
2 3 4 5 6 7 8	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit liabilities for withdrawal liability	2 3 4 5 6 7 8	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment return, Mr. Lotruglio commented. Why don't
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2 3 4 5 6 7 8 9 10 11 12 13 14	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit liabilities for withdrawal liability purposes, correct? A. Say that again? I'm sorry, repeat that? (The pending question was read.) THE WITNESS: Yes, does not require, yes.	2 3 4 5 6 7 8 9 10 11 12 13 14	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment return, Mr. Lotruglio commented. Why don't you read that. And again Mr. Lotruglio is one of the representatives from the investment advisor, correct? A. My understanding, yes. Q. So the minutes indicate that, quote, with regard to investment return,
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit liabilities for withdrawal liability purposes, correct? A. Say that again? I'm sorry, repeat that? (The pending question was read.) THE WITNESS: Yes, does not require, yes. Q. Alright, let's turn to Exhibit 128. Those are the board minutes for April 17, 2008. And I note again on the first page of those minutes, which is	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment return, Mr. Lotruglio commented. Why don't you read that. And again Mr. Lotruglio is one of the representatives from the investment advisor, correct? A. My understanding, yes. Q. So the minutes indicate that, quote, with regard to investment return, Mr. Lotruglio commented that the investment portfolio was structured to produce a
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit liabilities for withdrawal liability purposes, correct? A. Say that again? I'm sorry, repeat that? (The pending question was read.) THE WITNESS: Yes, does not require, yes. Q. Alright, let's turn to Exhibit 128. Those are the board minutes for April 17, 2008. And I note again on the first page of those minutes, which is 3099, it indicates that you were present at	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment return, Mr. Lotruglio commented. Why don't you read that. And again Mr. Lotruglio is one of the representatives from the investment advisor, correct? A. My understanding, yes. Q. So the minutes indicate that, quote, with regard to investment return, Mr. Lotruglio commented that the investment portfolio was structured to produce a 7.5 percent annual rate of return. Do you agree with this statement set forth in the minutes? That is do you
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit liabilities for withdrawal liability purposes, correct? A. Say that again? I'm sorry, repeat that? (The pending question was read.) THE WITNESS: Yes, does not require, yes. Q. Alright, let's turn to Exhibit 128. Those are the board minutes for April 17, 2008. And I note again on the first page of those minutes, which is 3099, it indicates that you were present at this board of trustees meeting. Do you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment return, Mr. Lotruglio commented. Why don't you read that. And again Mr. Lotruglio is one of the representatives from the investment advisor, correct? A. My understanding, yes. Q. So the minutes indicate that, quote, with regard to investment return, Mr. Lotruglio commented that the investment portfolio was structured to produce a 7.5 percent annual rate of return. Do you agree with this statement set forth in the minutes? That is do you understand that the investment portfolio
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit liabilities for withdrawal liability purposes, correct? A. Say that again? I'm sorry, repeat that? (The pending question was read.) THE WITNESS: Yes, does not require, yes. Q. Alright, let's turn to Exhibit 128. Those are the board minutes for April 17, 2008. And I note again on the first page of those minutes, which is 3099, it indicates that you were present at this board of trustees meeting. Do you have any reason to believe you were not	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment return, Mr. Lotruglio commented. Why don't you read that. And again Mr. Lotruglio is one of the representatives from the investment advisor, correct? A. My understanding, yes. Q. So the minutes indicate that, quote, with regard to investment return, Mr. Lotruglio commented that the investment portfolio was structured to produce a 7.5 percent annual rate of return. Do you agree with this statement set forth in the minutes? That is do you understand that the investment portfolio for this Fund had been structured to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross Q. So the Segal blend is uniquely applied for the withdrawal liability purpose, correct? A. Yes. Q. And the statutory scheme, the relevant statutory scheme does not require use of the Segal blend to value benefit liabilities for withdrawal liability purposes, correct? A. Say that again? I'm sorry, repeat that? (The pending question was read.) THE WITNESS: Yes, does not require, yes. Q. Alright, let's turn to Exhibit 128. Those are the board minutes for April 17, 2008. And I note again on the first page of those minutes, which is 3099, it indicates that you were present at this board of trustees meeting. Do you have any reason to believe you were not present?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross page 2 of the minutes under the heading of Roman number four, Consultant's Report, do you see that? A. Yes. Q. And why don't you read the fourth paragraph under capital letter A on that page. It begins with regard to investment return, Mr. Lotruglio commented. Why don't you read that. And again Mr. Lotruglio is one of the representatives from the investment advisor, correct? A. My understanding, yes. Q. So the minutes indicate that, quote, with regard to investment return, Mr. Lotruglio commented that the investment portfolio was structured to produce a 7.5 percent annual rate of return. Do you agree with this statement set forth in the minutes? That is do you understand that the investment portfolio for this Fund had been structured to produce a 7.5 percent annual rate of

	Page 1089		Page 1090
1	Egan - Cross	1	Egan - Cross
2	Q. You have no reason to disagree	2	assumes that they determined it.
3	with that statement?	3	THE ARBITRATOR: He's right.
4	A. No.	4	Q. In your experience with the NMDU
5	Q. Let me ask you this. Do you know	5 F	und, asset allocation classes are
6	whether in the case of this Fund, the		elected, correct?
7	investment advisor chose the asset	7	A. You would think so.
8	allocations to produce a 7.5 percent annual	8	Q. Do you have any reason to think
9	rate of return, or they chose the asset	9	you were the actuary, you attended
10	allocations based on other factors and then	10	A. Repeat the question, please.
11	you used those allocations to develop your	11	Q. Do you have any reason to believe
12	7.5 percent assumed rate?	12 th	at asset allocations were not selected
13	A. I don't know why they do what		or this particular Fund?
14	they do.	14	A. I have no reason to believe that
15	THE ARBITRATOR: Who does? You	15 t }	ney were not selected, but I don't know by
16	said they.		hom.
17	A. I don't know why the investment	17	Q. You don't know whether the
18	advisor does what they do.	¹⁸ ir	evestment advisor selected it or the
19	Q. So just to clarify the record,		ustees selected them based on the
20	let me ask this clarifying question.		dvisor's recommendation, correct?
21	You are not aware of how the	21	A. Correct.
22	investment advisor for this Fund went about	22	Q. In your experience however,
23	and what objectives it had in determining	23 ir	evestment advisors at the least make
24	the asset allocation classes for this Fund?	24 re	ecommendations about asset classes for
25	MR. RICHMAN: Objection. It	25 m	ulti-employer pension funds, correct?
			,
	Page 1091		Page 1092
1	Page 1091 Egan - Cross	1	Page 1092 Egan - Cross
2	_	2 A	
	Egan - Cross	2 A3 dr	Egan - Cross
2 3 4	Egan - Cross MR. RICHMAN: Objection, asks for an expert witness opinion. In her experience?	2 A 3 dr 4 A	Egan - Cross pril 17, 2008, meeting. And I want to raw your attention to page 2 of this memo. nd can you please review the very last
2 3 4 5	Egan - Cross MR. RICHMAN: Objection, asks for an expert witness opinion. In her experience? THE ARBITRATOR: I don't think	2 A 3 di 4 A 5 pa	Egan - Cross pril 17, 2008, meeting. And I want to raw your attention to page 2 of this memo. nd can you please review the very last aragraph on page 2.
2 3 4 5 6	Egan - Cross MR. RICHMAN: Objection, asks for an expert witness opinion. In her experience? THE ARBITRATOR: I don't think that's asking for an expert opinion,	2 A 3 da 4 A 5 pa	Egan - Cross pril 17, 2008, meeting. And I want to raw your attention to page 2 of this memo. nd can you please review the very last aragraph on page 2. A. Okay, yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross MR. RICHMAN: Objection, asks for an expert witness opinion. In her experience? THE ARBITRATOR: I don't think that's asking for an expert opinion, it's asking for what her personal experience is. MR. RICHMAN: She's not an expert, and opinion is not relevant. THE ARBITRATOR: Well, this is going to a factual question. Go ahead. THE WITNESS: I've seen it many different ways, where the trustees select whether they ask recommendations from the advisors. I've seen it all different ways. Q. Now let's turn to Exhibit D, and it begins on page 3316. A memo from you and Mr. Urbank to the trustees of the NMDU. Ms. Egan, are you there? A. Yes.	2 A 3 di 4 A 5 pa 6 7 8 th 9 th 10 in 11 ca 12 th 13 ca 14 op 15 ba 16 17 18 st 19 ba 20 21 22 in 23 as	Egan - Cross pril 17, 2008, meeting. And I want to raw your attention to page 2 of this memo. nd can you please review the very last aragraph on page 2. A. Okay, yes. Q. This last paragraph indicates nat you and Mr. Urbank had recommended nat the trustees establish three potential exestment scenarios in connection with extain Pension Protection Act projections nat you were going to make. One was alled a pessimistic and then another an obtimistic and then the third was a aseline scenario, do you see that? A. Yes. Q. And the baseline scenario it ates was a 7.5 percent investment return aseline, do you see that? A. Yes. Q. And that in addition, this evestment assumption was going to be an

	Page 1093	Page 1094
1	Egan - Cross	Egan - Cross
2	Q. And these various investment	2 assumption.
3	scenarios were going to allow the trustees	3 A. Yes, it is a long-term
4	after you had done some modelling to review	4 assumption.
5	potential future funding levels for the	5 Q. But for these modelling purposes
6	plan, right?	you believed it was appropriate to have as
7	A. Yes.	7 a baseline for a five-year modelling period
8	Q. So you suggested according to	8 7.5 percent, correct?
9	these minutes that the baseline return for	9 A. It it's just basically to start
10		somewhere. You're taking the valuation and
11	this exercise be a 7.5 percent return, correct?	somewhere. Toute taking the variation and
12	A. Yes.	putting it out there, and this is where you are based on the valuation. Then we're
13		are based on the valuation. Then we re
14	Q. And in addition you suggested a	suggesting to go above and below it to see
15	five-year or a ten-year investment return	sensitivity against the variations to
16	modelling period, correct? A. Yes.	see the sensitivity above and below the
17		variation assumptions.
18	Q. Why did you recommend 7.5 percent	Q. But honetheress you thought 7.5
19	as the suggested baseline return for a	percent was an appropriate baseline for
20	possible five-year and possible ten-year	tills model.
21	modelling period?	11. It's just the valuation
22	A. It's a funding assumption. It's	assumption. We're just starting with the
23	just to start off somewhere, to show what	variation assumption. It's a place to
24	the valuation is showing. Illustration.	start. Numbers they aready had.
25	Q. And you said a moment ago that	Q. was there in your judgment any
23	your funding assumption is a long-term	other place to start?
	Page 1095	Page 1096
1		_
1 2	Egan - Cross	¹ Egan - Cross
	Egan - Cross A. The next step is to look at	Egan - Cross and a more pessimistic assumption, correct?
2	Egan - Cross A. The next step is to look at better and worse.	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question
2	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're
2 3 4	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking.
2 3 4 5	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And
2 3 4 5 6	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees
2 3 4 5 6 7	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent?	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it
2 3 4 5 6 7 8	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent? A. We were suggesting to do the	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it indicates on the first page of the minutes,
2 3 4 5 6 7 8	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent? A. We were suggesting to do the valuation assumption plus two more. The	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it indicates on the first page of the minutes, Ms. Egan, that you attended? I assume you
2 3 4 5 6 7 8 9	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent? A. We were suggesting to do the valuation assumption plus two more. The valuation assumption was already there.	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it indicates on the first page of the minutes, Ms. Egan, that you attended? I assume you
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2 3 4 5 6 7 8 9 10 11	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent? A. We were suggesting to do the valuation assumption plus two more. The valuation assumption was already there. Start there and then do two more, better and worse.	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it indicates on the first page of the minutes, Ms. Egan, that you attended? I assume you have no reason to believe you didn't. A. No. Q. Let's turn to page 2, and let's
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2 3 4 5 6 7 8 9 10 11 12 13 14	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent? A. We were suggesting to do the valuation assumption plus two more. The valuation assumption was already there. Start there and then do two more, better and worse. Q. Let me see if I can wrap this up with one final question. For purposes of a	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it indicates on the first page of the minutes, Ms. Egan, that you attended? I assume you have no reason to believe you didn't. A. No. Q. Let's turn to page 2, and let's draw your attention to the discussion under section 5, which is entitled the Segal
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent? A. We were suggesting to do the valuation assumption plus two more. The valuation assumption was already there. Start there and then do two more, better and worse. Q. Let me see if I can wrap this up with one final question. For purposes of a baseline for a five year modelling	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it indicates on the first page of the minutes, Ms. Egan, that you attended? I assume you have no reason to believe you didn't. A. No. Q. Let's turn to page 2, and let's draw your attention to the discussion under section 5, which is entitled the Segal Company, the Segal Company Discussion.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Egan - Cross A. The next step is to look at better and worse. Q. No, I'm sorry, in connection with the baseline, in your judgment was there any other appropriate place to start a five-year investment return modelling project than 7.5 percent? A. We were suggesting to do the valuation assumption plus two more. The valuation assumption was already there. Start there and then do two more, better and worse. Q. Let me see if I can wrap this up with one final question. For purposes of a baseline for a five year modelling analysis, you recommended the 7.5 percent	Egan - Cross and a more pessimistic assumption, correct? A. I'm not sure what the question is. I'm not sure I understand what you're asking. Q. Let's turn to Exhibit 133. And these are minutes of a board of trustees meeting of December 16, 2009, and it indicates on the first page of the minutes, Ms. Egan, that you attended? I assume you have no reason to believe you didn't. A. No. Q. Let's turn to page 2, and let's draw your attention to the discussion under section 5, which is entitled the Segal Company, the Segal Company Discussion. Alright, four paragraphs into the
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	Page 1097		Page 1098
1	Egan - Cross	1	Egan - Cross
2	A. Okay.	2	May 31, 2017, assuming future market value
3	Q. So this paragraph indicates that	3	rates of return of 7.5 percent. Do you see
4	you had done a projection on the funding	4	that?
5	standard account, correct?	5	A. Yes.
6	A. Yes.	6	Q. And thus this discussion
7	Q. Alright, let me ask a couple of	7	indicates that you had modelled future Fund
8	foundational questions here. All	8	performance in order to determine whether
9	multi-employer plans need to maintain the	9	and when the funding standard account would
10	funding standard account, correct?	10	run a deficit and thus require
11	A. Yes.	11	contributions, correct?
12	Q. Right, and it's not an actual	12	A. Under that one scenario, yes.
13	subaccount of the trust, it's just a	13	Q. And in undertaking this
14	bookkeeping account, correct?	14	modelling, you assumed that for each year,
15	A. Yes.	15	including and after 2009, the Fund would
16	Q. And the calculations concerning a	16	earn a 7.5 percent return, correct?
17	funding standard account determine whether	17	A. Yes.
18	there needs to be a minimum amount of	18	Q. And your results showed that
19	contributions to that pension plan under	19	after eight straight years of a 7.5 percent
20	the Internal Revenue Code, agreed?	20	compounded return, there would be as of the
21	A. Yes.	21	plan year ending May 31, 2017 a deficit in
22	Q. So continuing to read the minutes	22	the funding standard account, correct?
23	in this paragraph, it states that you	23	A. Yes.
24	advised that, quote, the credit balance	24	Q. Okay, let's turn to Exhibit E to
25	will be depleted in the plan year ending	25	these, and that begins at Fund page 3345.
	Page 1099		Page 1100
1		1	
1 2	Egan - Cross	1 2	Page 1100 Egan - Cross A. Yes.
	Egan - Cross Alright, this is a memo from you		Egan - Cross A. Yes.
2	Egan - Cross Alright, this is a memo from you and Mr. Urbank to the board of trustees,	2	Egan - Cross A. Yes. Q. And am I therefore correct that
2	Egan - Cross Alright, this is a memo from you and Mr. Urbank to the board of trustees, and it discusses zone certifications and	2 3	Egan - Cross A. Yes. Q. And am I therefore correct that in November of 2009, Segal made a
2 3 4	Egan - Cross Alright, this is a memo from you and Mr. Urbank to the board of trustees, and it discusses zone certifications and certain modelling scenarios that you had	2 3 4	Egan - Cross A. Yes. Q. And am I therefore correct that in November of 2009, Segal made a projection about what the Fund's zone
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2 3 4 5 6	Egan - Cross Alright, this is a memo from you and Mr. Urbank to the board of trustees, and it discusses zone certifications and certain modelling scenarios that you had undertaken in order to project zone status. Do you agree with that?	2 3 4 5 6	Egan - Cross A. Yes. Q. And am I therefore correct that in November of 2009, Segal made a projection about what the Fund's zone
2 3 4 5 6 7	Egan - Cross Alright, this is a memo from you and Mr. Urbank to the board of trustees, and it discusses zone certifications and certain modelling scenarios that you had undertaken in order to project zone status. Do you agree with that? A. Yes.	2 3 4 5 6 7	Egan - Cross A. Yes. Q. And am I therefore correct that in November of 2009, Segal made a projection about what the Fund's zone status would be as of the end of that current plan year? A. Yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross Alright, this is a memo from you and Mr. Urbank to the board of trustees, and it discusses zone certifications and certain modelling scenarios that you had undertaken in order to project zone status. Do you agree with that? A. Yes. Q. Okay, and did you prepare this memo? A. Yes. Q. And let's take a look at the second paragraph of the memo. It begins with the words although the trustees elected to free. A. Yes. Q. So this paragraph indicates that assuming all assumptions are met, including a market rate of return of 7.5 percent, there was a projection that by May 31, 2010 the Fund was expected to be seriously in danger. Do you see that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Egan - Cross A. Yes. Q. And am I therefore correct that in November of 2009, Segal made a projection about what the Fund's zone status would be as of the end of that current plan year? A. Yes. Q. Okay, and for purposes of making the projection for that current plan year, Segal assumed a 7.5 investment return. Yes or no? A. It was an illustration, yes. Q. So the answer to my question is yes? A. Yes. Q. Now let's turn to page two. A. Same memo? Q. Yes, same memo, thank you. And why don't you read the paragraph immediately after the chart on page two. I'm sorry, I'm going to ask you
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Page 1101	Page 1102
1 Egan - Cross	¹ Egan - Cross
zone status in the future were made	you attended that meeting. I assume there
assuming that the plan, quote, will	is no reason for you to believe that's
experience a market rate of return of	inaccurate?
5 7.5 percent each year into the future. Do	5 A. Right.
you see that quote?	Q. Okay. So let me draw your
7 A. Yes.	attention to the narrative under Roman
8 Q. So am I correct that Segal	8 numeral 2, discussion of funding
9 thought it appropriate in projecting future	improvement plan, and then very first
zone status that this plan would return 7.5	paragraph indicates that Mr. Urbank made a
percent on its assets for each year in the	paragraph indicates that Wi. Orbank made a presentation about the pension plan's zone
future?	status and he reminded the trustees that
13 A. It was an illustration that if	based on the actuarial valuation as of June
you got seven and a half percent, this is	14 1, 2010 the Fund was in seriously
the result you would get.	1, 2010 the rund was in seriously endangered status. And then he indicated
Q. But Segal determined to use the	that for this funded status purpose among
7.5 percent investment return assumption	that for this funded status purpose among the assumptions was that you took a
for purposes of this illustration model,	18 7.5 percent investment rate of return
19 correct?	assumption into account, correct?
20 A. This one illustration.	A. For that document, yes.
Q. That's a yes?	Q. That document being the
A. Yes, for this one illustration.	determination of zone status for June 1,
Q. Now let's take a look at	23 2010?
Exhibit 137. They are the minutes and	A. I guess whatever is Exhibit A.
25 again, it indicates in the first page that	Q. Unfortunately, there is no
again, it indicates in the first page that	Q. Officialities, there is no
Page 1103	Page 1104
Egan - Cross	Egan - Cross
² Exhibit A.	return assumption of 7.5 percent, correct?
A. It's referring to Exhibit A, so I	³ A. Yes.
don't remember exactly what was Exhibit A.	Q. Okay, thank you. Now I'm going
So it's hard to answer.	5 to turn to a series of questions about the
	6 first issue in this case, contribution base
⁶ Q. Sorry. The reference to Exhibit	inst issue in this case, contribution case
A is to a Segal report on funding	vnits. Alright, let's turn our attention
A is to a Segal report on funding improvement plan projections. The	7 units. Alright, let's turn our attention 8 back to an earlier set of minutes. Let's
A is to a Segal report on funding improvement plan projections. The reference to the determination of serious	7 units. Alright, let's turn our attention 8 back to an earlier set of minutes. Let's 9 turn to Exhibit 128.
A is to a Segal report on funding improvement plan projections. The reference to the determination of serious endangered status as of June 1, 2010 in	units. Alright, let's turn our attention back to an earlier set of minutes. Let's turn to Exhibit 128. A. Okay.
A is to a Segal report on funding improvement plan projections. The reference to the determination of serious endangered status as of June 1, 2010 in this narrative is independent of the	units. Alright, let's turn our attention back to an earlier set of minutes. Let's turn to Exhibit 128. A. Okay. Okay. Okay.
A is to a Segal report on funding improvement plan projections. The reference to the determination of serious endangered status as of June 1, 2010 in this narrative is independent of the reference to Exhibit a A.	units. Alright, let's turn our attention back to an earlier set of minutes. Let's turn to Exhibit 128. A. Okay. Q. Do you have any reason to believe you did not attend this meeting of the
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	Page 1105		Page 1106
1	Egan - Cross	1	Egan - Cross
2	A. Yes.	2	It begins at page Fund 3319. And this is a
3	Q. Okay. So this page of the	3	memo from Mr. Urbank and you to the board
4	minutes and this note indicates the union	4	of trustees dated April 17, 2008. Take a
5	trustees in their capacity as union	5	moment to look at this memo and then let me
6	officials agreed to provide Segal with a	6	know whether you drafted this memo or
7	schedule of future contribution rate	7	approved this memo.
8		8	A. Yes.
9	changes by employer, do you see that? A. Yes.	9	
10		10	Q. Yes, you
11	Q. To your knowledge was that	11	A. I finished looking at it, and
12	information ever provided?	12	yes, I was probably involved in this memo.
13	A. I'm not sure how detailed it was	13	Q. You were involved in the
14	provided. It might not have been by	14	preparation of this memo?
15	employer, it might have been just big	15	A. Yes.
	picture.	16	Q. Okay. Can you turn to paragraph
16	Q. Do you recall receiving some form		4, and in the last sentence in paragraph 4,
17	of future contribution rate information	17 18	you see it refers to, quote, contributions
18	from the union officials?		are a percentage of wages, do you see that?
19	A. I don't remember exactly what was	19	A. Yes.
20	received for this purpose.	20	Q. So am I correct that in this memo
21	Q. You don't remember one way or the	21	you chose to characterize the contributions
22	other?	22	to this Fund as a, quote, percentage of
23	A. No. I can't picture it.	23	wages, correct? Yes or no.
24	Q. I'm now going to draw your	24	A. It was written that way, yes.
25	attention to Exhibit C of these minutes.	25	Q. And you either wrote it or
	Page 1107		Page 1108
1		1	-
1 2	Egan - Cross	1 2	Egan - Cross
	Egan - Cross approved it, yes?		Egan - Cross Q. I'm sorry, I was focusing on the
2	Egan - Cross approved it, yes? A. Yes.	2	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of
2	Egan - Cross approved it, yes? A. Yes. Q. Let's turn to Exhibit 130, those	2 3 4	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of page 3. I'm sorry, I was moving too
2 3 4 5	Egan - Cross approved it, yes? A. Yes. Q. Let's turn to Exhibit 130, those are minutes from December 9, 2008. Do you	2	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of page 3. I'm sorry, I was moving too quickly.
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2 3 4 5 6 7	Egan - Cross approved it, yes? A. Yes. Q. Let's turn to Exhibit 130, those are minutes from December 9, 2008. Do you see those minutes? A. Yes.	2 3 4 5 6 7	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of page 3. I'm sorry, I was moving too quickly. A. I'm sorry, I'm slow. Okay. Q. So you agree that the minutes
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross approved it, yes? A. Yes. Q. Let's turn to Exhibit 130, those are minutes from December 9, 2008. Do you see those minutes? A. Yes. Q. Okay. And again it indicates in the minutes that you attended and I assume you did, or there's no reason to believe you didn't? A. Correct. Q. Alright. And let's turn to the discussion on page 3, under heading 7, the Segal Company. A. Okay. Q. And in particular paragraph A. And let me just get right to the question at hand. In the last sentence of that paragraph, it indicates that Segal needed in order to proceed with certain studies for Pension Protection Act purposes input	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of page 3. I'm sorry, I was moving too quickly. A. I'm sorry, I'm slow. Okay. Q. So you agree that the minutes indicate that Segal required input from the trustees on, among other things, contribution rates? A. Yes. Q. Did the trustees or anyone else on behalf of the Fund provide Segal with the contribution rates that were requested? A. I don't remember what was provided here for this purpose. Q. You don't know one way or the other? A. This is for live modelling and it's provided at the point of the modelling, so people say if the contribution rate goes up 10 percent, let
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross approved it, yes? A. Yes. Q. Let's turn to Exhibit 130, those are minutes from December 9, 2008. Do you see those minutes? A. Yes. Q. Okay. And again it indicates in the minutes that you attended and I assume you did, or there's no reason to believe you didn't? A. Correct. Q. Alright. And let's turn to the discussion on page 3, under heading 7, the Segal Company. A. Okay. Q. And in particular paragraph A. And let me just get right to the question at hand. In the last sentence of that paragraph, it indicates that Segal needed in order to proceed with certain studies for Pension Protection Act purposes input from the trustees for among other things	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of page 3. I'm sorry, I was moving too quickly. A. I'm sorry, I'm slow. Okay. Q. So you agree that the minutes indicate that Segal required input from the trustees on, among other things, contribution rates? A. Yes. Q. Did the trustees or anyone else on behalf of the Fund provide Segal with the contribution rates that were requested? A. I don't remember what was provided here for this purpose. Q. You don't know one way or the other? A. This is for live modelling and it's provided at the point of the modelling, so people say if the contribution rate goes up 10 percent, let me see what it looks like, and we plug in
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Egan - Cross approved it, yes? A. Yes. Q. Let's turn to Exhibit 130, those are minutes from December 9, 2008. Do you see those minutes? A. Yes. Q. Okay. And again it indicates in the minutes that you attended and I assume you did, or there's no reason to believe you didn't? A. Correct. Q. Alright. And let's turn to the discussion on page 3, under heading 7, the Segal Company. A. Okay. Q. And in particular paragraph A. And let me just get right to the question at hand. In the last sentence of that paragraph, it indicates that Segal needed in order to proceed with certain studies for Pension Protection Act purposes input from the trustees for among other things contribution rates. Do you see that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of page 3. I'm sorry, I was moving too quickly. A. I'm sorry, I'm slow. Okay. Q. So you agree that the minutes indicate that Segal required input from the trustees on, among other things, contribution rates? A. Yes. Q. Did the trustees or anyone else on behalf of the Fund provide Segal with the contribution rates that were requested? A. I don't remember what was provided here for this purpose. Q. You don't know one way or the other? A. This is for live modelling and it's provided at the point of the modelling, so people say if the contribution rate goes up 10 percent, let me see what it looks like, and we plug in what if it goes up 10 percent. If the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross approved it, yes? A. Yes. Q. Let's turn to Exhibit 130, those are minutes from December 9, 2008. Do you see those minutes? A. Yes. Q. Okay. And again it indicates in the minutes that you attended and I assume you did, or there's no reason to believe you didn't? A. Correct. Q. Alright. And let's turn to the discussion on page 3, under heading 7, the Segal Company. A. Okay. Q. And in particular paragraph A. And let me just get right to the question at hand. In the last sentence of that paragraph, it indicates that Segal needed in order to proceed with certain studies for Pension Protection Act purposes input from the trustees for among other things	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross Q. I'm sorry, I was focusing on the last sentence in paragraph 7A at the top of page 3. I'm sorry, I was moving too quickly. A. I'm sorry, I'm slow. Okay. Q. So you agree that the minutes indicate that Segal required input from the trustees on, among other things, contribution rates? A. Yes. Q. Did the trustees or anyone else on behalf of the Fund provide Segal with the contribution rates that were requested? A. I don't remember what was provided here for this purpose. Q. You don't know one way or the other? A. This is for live modelling and it's provided at the point of the modelling, so people say if the contribution rate goes up 10 percent, let me see what it looks like, and we plug in

	7 1100		7 1110
	Page 1109		Page 1110
1	Egan - Cross	1	Egan - Cross
2	percent, what does it look like, and we	2	Q. And did you prepare this memo?
	plug in that. That's the input we need to	3	A. Most probably.
4	do.	4	Q. And do you have any reason to
5	Q. And do you recall in connection	5	believe you did not present on this memo at
6	with this live modelling getting that input	6	the trustee meeting of August 5, 2009?
7	on contribution rates?	7	A. I'm not sure. It's not in the
8	A. At the point of the modelling	8	minutes.
9	they asked us to try different things. And	9	Q. Maybe this will refresh your
10	I don't remember exactly what different	10	recollection. Turn to page six, and under
11	scenarios they asked us to do, but they	11	
12		12	the heading Roman 9, Segal Company Report,
13	gave us direction as to what to plug in.	13	look at the second paragraph. It says that
14	Q. Let's turn to Exhibit 131. Okay,	14	you and Mr. Urbank distributed and
15	I want you to turn to Exhibit H in this set	15	reviewed.
	of minutes from August 5, 2009, 131, and		A. Yes, so then we probably did.
16	Exhibit H is found at page 03330.	16	Q. Okay. So the first paragraph
17	A. What section am I in?	17	indicates that Segal had been making zone
18	Q. Exhibit 131, at the top it says	18	status certification projections, and those
	Exhibit H, at the top on the right, do you	19	projections were based on certain
20	see that?	20	assumptions and it identifies key
21	A. Yes.	21	assumptions such as active participants and
22	Q. Okay, good. This is a memo from	22	annual wage increases, do you see that?
	you and Mr. Urbank to the board of trustees	23	A. Yes.
24	dated August 5, 2009, correct?	24	Q. There was no assumption made
25	A. Yes.	25	about shifts to be worked in the future,
	Page 1111		Page 1112
1		1	
1 2	Egan - Cross	1 2	Egan - Cross
2	Egan - Cross correct?	2	Egan - Cross sentence.
2	Egan - Cross correct? A. No.	2	Egan - Cross sentence. A. Okay.
2 3 4	Egan - Cross correct? A. No. Q. And that's because Segal did not	2 3 4	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the
2 3 4 5	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by	2 3 4 5	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to
2 3 4 5 6	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and	2 3 4 5 6	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a
2 3 4 5 6 7	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a	2 3 4 5 6 7	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct?
2 3 4 5 6 7 8	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct?	2 3 4 5 6 7 8	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes.
2 3 4 5 6 7 8 9	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct.	2 3 4 5 6 7 8 9	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting
2 3 4 5 6 7 8 9	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct. Q. All right, let's turn now to	2 3 4 5 6 7 8 9	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting projected industry activity, you also asked
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2 3 4 5 6 7 8 9 10 11 12 13	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct. Q. All right, let's turn now to Exhibit 134. And why don't you turn your attention to the document that's got at the top of it, Exhibit F. And it begins at page 3356. It's a May 19, 2010 memo from	2 3 4 5 6 7 8 9 10 11 12 13 14	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting projected industry activity, you also asked the Fund to provide you in connection with modelling you were doing with, quote, expected wage increases in future years. Do you see that?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct. Q. All right, let's turn now to Exhibit 134. And why don't you turn your attention to the document that's got at the top of it, Exhibit F. And it begins at page 3356. It's a May 19, 2010 memo from Mr. Urbank and you. A. Yes. Q. Alright, did you prepare this memo? A. Probably, yes. Q. And why don't you turn your	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting projected industry activity, you also asked the Fund to provide you in connection with modelling you were doing with, quote, expected wage increases in future years. Do you see that? A. Yes. Q. And then you go on to say since contributions are a percentage of wages, do you see that? A. Yes. Q. In connection with this Fund, to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct. Q. All right, let's turn now to Exhibit 134. And why don't you turn your attention to the document that's got at the top of it, Exhibit F. And it begins at page 3356. It's a May 19, 2010 memo from Mr. Urbank and you. A. Yes. Q. Alright, did you prepare this memo? A. Probably, yes. Q. And why don't you turn your attention to page 2 of the memo and the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting projected industry activity, you also asked the Fund to provide you in connection with modelling you were doing with, quote, expected wage increases in future years. Do you see that? A. Yes. Q. And then you go on to say since contributions are a percentage of wages, do you see that? A. Yes. Q. In connection with this Fund, to use your words in this memo, since
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct. Q. All right, let's turn now to Exhibit 134. And why don't you turn your attention to the document that's got at the top of it, Exhibit F. And it begins at page 3356. It's a May 19, 2010 memo from Mr. Urbank and you. A. Yes. Q. Alright, did you prepare this memo? A. Probably, yes. Q. And why don't you turn your attention to page 2 of the memo and the paragraph that's numbered paragraph 4, projected industry activity.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting projected industry activity, you also asked the Fund to provide you in connection with modelling you were doing with, quote, expected wage increases in future years. Do you see that? A. Yes. Q. And then you go on to say since contributions are a percentage of wages, do you see that? A. Yes. Q. In connection with this Fund, to use your words in this memo, since contributions are a percentage of wages, you would need to know how future wages
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct. Q. All right, let's turn now to Exhibit 134. And why don't you turn your attention to the document that's got at the top of it, Exhibit F. And it begins at page 3356. It's a May 19, 2010 memo from Mr. Urbank and you. A. Yes. Q. Alright, did you prepare this memo? A. Probably, yes. Q. And why don't you turn your attention to page 2 of the memo and the paragraph that's numbered paragraph 4, projected industry activity. A. Okay.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting projected industry activity, you also asked the Fund to provide you in connection with modelling you were doing with, quote, expected wage increases in future years. Do you see that? A. Yes. Q. And then you go on to say since contributions are a percentage of wages, do you see that? A. Yes. Q. In connection with this Fund, to use your words in this memo, since contributions are a percentage of wages, you would need to know how future wages might increase in order to project future
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross correct? A. No. Q. And that's because Segal did not calculate future contributions by projecting a number of expected shifts and multiplying that expected shift number by a per shift wage rate, correct? A. Correct. Q. All right, let's turn now to Exhibit 134. And why don't you turn your attention to the document that's got at the top of it, Exhibit F. And it begins at page 3356. It's a May 19, 2010 memo from Mr. Urbank and you. A. Yes. Q. Alright, did you prepare this memo? A. Probably, yes. Q. And why don't you turn your attention to page 2 of the memo and the paragraph that's numbered paragraph 4, projected industry activity.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross sentence. A. Okay. Q. So again, you chose to use as the terminology to describe contributions to this Pension Fund contributions being a percentage of wages, correct? A. Yes. Q. In that last sentence respecting projected industry activity, you also asked the Fund to provide you in connection with modelling you were doing with, quote, expected wage increases in future years. Do you see that? A. Yes. Q. And then you go on to say since contributions are a percentage of wages, do you see that? A. Yes. Q. In connection with this Fund, to use your words in this memo, since contributions are a percentage of wages, you would need to know how future wages

	Page 1113		Page 1114
1	Egan - Cross	1	Egan - Cross
2	A. Yes.	2	at this exhibit.
3	Q. Alright, now let's turn to	3	A. Okay.
4	Exhibit 137. And these are meeting minutes	4	Q. This exhibit looks to be like a
5	of February 15, 2011. Do you see that?	5	slide deck or a PowerPoint presentation, is
6	A. Yes.	6	that correct?
7	Q. And on page 1 it indicates that	7	A. That's what it looks like.
8	you attended and Mr. Urbank attended and it	8	Q. And did you prepare this
9	also indicates that two others of your	9	document?
10	colleagues from the Segal Company attended	10	A. I most probably was involved.
11	in meeting, Mr. Lehman and Mr. Santasiero?	11	Q. You were involved in the
12	A. Yes.	12	preparation of this document, correct?
13	Q. Do you remember this meeting?	13	A. Yes.
14	A. There were a couple where they	14	Q. And turn to page 4 of this
15	attended, so I don't know if I remember	15	document, slide 4, it's Fund document
16	this specific one.	16	
17		17	number 3370. And at the top of that page there is a heading, it refers to eight
18	Q. But again there is a foundational question. You have no reason to believe	18	
19		19	percent CR allocation increasing to
20	A that I wasn't there, no.	20	11.5 percent, do you see that?
21	Q. Alright. I want you to turn your	21	A. Yes.
22	attention to the first exhibit behind the	22	Q. And what does CR stand for?
23	minutes and that's an exhibit that begins	23	A. Contribution rate.
	at page 3366.	23	Q. So this slide discusses
24	A. Yes.	25	essentially a funding improvement plan
25	Q. Okay, and take a minute to look	25	option or schedule in which the Fund's
	Page 1115		Page 1116
	Page 1115		Page 1116
1	Egan - Cross	1	Egan - Cross
2	Egan - Cross contribution rate would move from eight	2	Egan - Cross A. Yes.
2	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct?	2 3	Egan - Cross A. Yes. Q. In connection with the
2 3 4	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution	2 3 4	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present
2 3 4 5	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5	2 3 4 5	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the
2 3 4 5 6	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent.	2 3 4 5 6	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present
2 3 4 5 6 7	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent.	2 3 4 5 6 7	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the trustees this document? A. Most probably.
2 3 4 5 6	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent. Q. But it says eight percent contribution rate, correct?	2 3 4 5 6	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the trustees this document? A. Most probably. Q. You don't have any reason to
2 3 4 5 6 7 8	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent. Q. But it says eight percent	2 3 4 5 6 7	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the trustees this document? A. Most probably.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent. Q. But it says eight percent contribution rate, correct? A. Allocation. Q. And then it says in the first bullet point, reflects current contribution rate of eight percent of wages? A. Allocation. Q. And what is your understanding of the word allocation? A. That the contribution rate is eight percent of the wage rate, and the portion that's a percentage is the eight, the allocation to the wage rate is the eight.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the trustees this document? A. Most probably. Q. You don't have any reason to believe you didn't? A. Right, correct. Q. Did you explain to them what you had meant by allocation? A. I don't remember specifically what I explained. Q. Alright, let's turn to slide 12, which is on page 3378. And I want to draw your attention to the bullet points under scenario two and scenario three. Do you see those? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent. Q. But it says eight percent contribution rate, correct? A. Allocation. Q. And then it says in the first bullet point, reflects current contribution rate of eight percent of wages? A. Allocation. Q. And what is your understanding of the word allocation? A. That the contribution rate is eight percent of the wage rate, and the portion that's a percentage is the eight, the allocation to the wage rate is the eight. Q. But you didn't use the term wage	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the trustees this document? A. Most probably. Q. You don't have any reason to believe you didn't? A. Right, correct. Q. Did you explain to them what you had meant by allocation? A. I don't remember specifically what I explained. Q. Alright, let's turn to slide 12, which is on page 3378. And I want to draw your attention to the bullet points under scenario two and scenario three. Do you see those? A. Yes. Q. So scenario two, the third bullet
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent. Q. But it says eight percent contribution rate, correct? A. Allocation. Q. And then it says in the first bullet point, reflects current contribution rate of eight percent of wages? A. Allocation. Q. And what is your understanding of the word allocation? A. That the contribution rate is eight percent of the wage rate, and the portion that's a percentage is the eight, the allocation to the wage rate is the eight. Q. But you didn't use the term wage rate, did you?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the trustees this document? A. Most probably. Q. You don't have any reason to believe you didn't? A. Right, correct. Q. Did you explain to them what you had meant by allocation? A. I don't remember specifically what I explained. Q. Alright, let's turn to slide 12, which is on page 3378. And I want to draw your attention to the bullet points under scenario two and scenario three. Do you see those? A. Yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross contribution rate would move from eight percent to 11.5 percent, correct? A. The portion of the contribution rate that was 8 percent becomes 11.5 percent. Q. But it says eight percent contribution rate, correct? A. Allocation. Q. And then it says in the first bullet point, reflects current contribution rate of eight percent of wages? A. Allocation. Q. And what is your understanding of the word allocation? A. That the contribution rate is eight percent of the wage rate, and the portion that's a percentage is the eight, the allocation to the wage rate is the eight. Q. But you didn't use the term wage rate, did you? A. No, but that's what it's meant to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross A. Yes. Q. In connection with the February 15, 2011, meeting, did you present to the trustees and go over with the trustees this document? A. Most probably. Q. You don't have any reason to believe you didn't? A. Right, correct. Q. Did you explain to them what you had meant by allocation? A. I don't remember specifically what I explained. Q. Alright, let's turn to slide 12, which is on page 3378. And I want to draw your attention to the bullet points under scenario two and scenario three. Do you see those? A. Yes. Q. So scenario two, the third bullet point talks about eight percent, I guess

Page 1117	Page 1118
_	
Egan - Cross	Egan - Cross
A. Yes.	Wage/contribution?
Q. And then under scenario 3,	A. Yes.
eight percent contribution rate	Q. So I want to ask a couple of
with reallocation increases the	5 questions about the relationship between
contribution rate to nine percent.	wages and contributions. Under this
⁷ A. Okay.	Pension Fund if an employer increases the
⁸ Q. What did you mean by	8 total wages it pays to its employees, it
9 reallocation?	⁹ also would increase the contributions it
A. I don't know that it meant	pays to the Pension Fund, correct?
anything different than what the other	11 A. Yes.
meant.	Q. So in this Fund there is a direct
Q. But nonetheless you used the word	correlation between increases in wages and
reallocation as opposed to allocation?	increases in contributions, yes?
A. Yes, it says that there, yes.	15 A. Yes.
Q. I want to draw your attention	Q. And given this direct correlation
back one slide to slide 11, which is 3377.	between wages and contributions, you used
Excuse me, and I want to talk to you about	this formulation of one word wage/
the bullet that begins projected	contribution in the memo or in this
contributions based on average	PowerPoint because the concepts of wages
contributions. Do you see that bullet?	and contributions moved together, correct?
22 A. Yes.	A. I don't know if that's why we
Q. And I notice that you used the	used it, but the wages and contributions do
phrase in this bullet, average	move together.
wage/contribution, do you see that?	Q. Does anything on this slide
wago/contribution, do you see that:	Q. Boes anything on this since
Page 1119	Page 1120
1 Egan - Cross	¹ Egan - Cross
Egan - Cross mention shift numbers and expected shifts?	Egan - Cross paragraph. So the very last paragraph
Egan - Cross mention shift numbers and expected shifts? A. No.	Egan - Cross paragraph. So the very last paragraph begins the Segal representatives then
Egan - Cross mention shift numbers and expected shifts? A. No. Q. And there is nothing in this	Egan - Cross paragraph. So the very last paragraph begins the Segal representatives then conducted an interactive presentation
Egan - Cross mention shift numbers and expected shifts? A. No. Q. And there is nothing in this PowerPoint document at all that mentions	Egan - Cross paragraph. So the very last paragraph begins the Segal representatives then conducted an interactive presentation modelling a series of scenarios based on
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Egan - Cross mention shift numbers and expected shifts? A. No. Q. And there is nothing in this PowerPoint document at all that mentions shift numbers or projects expected shifts, correct? A. It doesn't project expected shifts and it doesn't use wages to project	Egan - Cross paragraph. So the very last paragraph begins the Segal representatives then conducted an interactive presentation modelling a series of scenarios based on various assumptions as well as various contribution rates, do you see that? A. Yes. Q. And this is the, again, just to
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Egan - Cross mention shift numbers and expected shifts? A. No. Q. And there is nothing in this PowerPoint document at all that mentions shift numbers or projects expected shifts, correct? A. It doesn't project expected shifts and it doesn't use wages to project either. Q. But I asked you about shifts so why don't you answer my question. A. Okay. Q. Mr. Richman can ask you questions. A. Sure, yes. Q. So let me clarify the record. There is nothing in this PowerPoint presentation that mentions shift numbers or projects expected shifts, correct? A. Correct. Q. Okay, so sticking with	Egan - Cross paragraph. So the very last paragraph begins the Segal representatives then conducted an interactive presentation modelling a series of scenarios based on various assumptions as well as various contribution rates, do you see that? A. Yes. Q. And this is the, again, just to confirm for the record, the minutes of the February 15, 2011 trustee meeting. So this notation in the minutes, this notation will lead to that interactive live modelling presentation that you previously referred to in your testimony, correct? A. Yes. Q. Okay, so this was the presentation in which I guess trustees suggested different contribution rates that were modelled, correct? A. Yes. Q. And in connection with their
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Egan - Cross mention shift numbers and expected shifts? A. No. Q. And there is nothing in this PowerPoint document at all that mentions shift numbers or projects expected shifts, correct? A. It doesn't project expected shifts and it doesn't use wages to project either. Q. But I asked you about shifts so why don't you answer my question. A. Okay. Q. Mr. Richman can ask you questions. A. Sure, yes. Q. So let me clarify the record. There is nothing in this PowerPoint presentation that mentions shift numbers or projects expected shifts, correct? A. Correct. Q. Okay, so sticking with	Egan - Cross paragraph. So the very last paragraph begins the Segal representatives then conducted an interactive presentation modelling a series of scenarios based on various assumptions as well as various contribution rates, do you see that? A. Yes. Q. And this is the, again, just to confirm for the record, the minutes of the February 15, 2011 trustee meeting. So this notation in the minutes, this notation will lead to that interactive live modelling presentation that you previously referred to in your testimony, correct? A. Yes. Q. Okay, so this was the presentation in which I guess trustees suggested different contribution rates that were modelled, correct? A. Yes. Q. And in connection with their

	Dama 1101		Da 22 1122
	Page 1121		Page 1122
1	Egan - Cross	1	Egan - Cross
2	A. No.	2	rates that we discussed in connection with
3	Q. Alright, now let's turn to	3	the PowerPoint for the February 15th on
4	Exhibit 138. This is a meeting on April 6,	4	2011?
5	2011. And the first page of the minutes,	5	A. Most probably.
6	Ms. Egan, indicates that it was largely	6	Q. Anything else to add to that
7	it was a special meeting and it was largely	7	answer?
8	to discuss a funding improvement plan.	8	A. No.
9	A. Yes.	9	Q. Let me ask you this. Isn't it
10	Q. Okay. I want to draw your	10	true that in discussing contributions and
11	attention to the slide deck of the	11	the contribution rate for this Fund with
12	PowerPoint presentation that follows these	12	the trustees, your practice was to
13	minutes that begins on page 3386. And in	13	characterize the contribution rate as
14	order to move this exam along, you'll see	14	either a percentage or a percentage of
15	that as part of Exhibit 139 and as part of	15	wages?
16	Exhibit 143, there are also PowerPoint	16	A. Yes.
17	presentations.	17	Q. And isn't it also true that you
18	THE ARBITRATOR: Where are we	18	employed this practice of characterizing
19	now?	19	the contribution rate as a percentage or a
20	Q. We were on 138 and I also asked	20	percentage of wages over a multi-year
21	her to take a look at the PowerPoint	21	period?
22	presentations behind 139, Mr. Arbitrator,	22	A. Most probably.
23	and 143. And my question was did these	23	Q. That's a yes?
24	slide decks use the same terminology	24	A. Yes.
25	respecting contributions and contribution	25	Q. And this was a practice that not
	Page 1123		Page 112/
-1	Page 1123		Page 1124
1	Egan - Cross	1	Egan - Cross
2	Egan - Cross only did you employ, but Mr. Urbank also	2	Egan - Cross Q. And the trustees of the Fund
2	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund,	2	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team
2 3 4	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct?	2 3 4	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as
2 3 4 5	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him.	2 3 4 5	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of
2 3 4 5 6	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe	2 3 4 5 6	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct?
2 3 4 5 6 7	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not?	2 3 4 5 6 7	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to
2 3 4 5 6 7 8	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not? A. Not really.	2 3 4 5 6 7 8	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to what the trustees would do. Argue
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not? A. Not really. Q. And isn't it also true that Mr. Urbank would take the lead for the Pension Fund in drafting trustee minutes, correct? A. Yes. Q. And in connection with the effort to prepare minutes, he too employed this practice of referring to the contribution rate as either a percentage or a percentage of wages, correct? A. It appears that way.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to what the trustees would do. Argue that. THE ARBITRATOR: Sustained. They were in the room, and they spoke it, and you can argue whether they heard it. Q. Let me ask you this. Isn't it true that you also employed a practice of referring to the plan's contributions as a percentage of wages? A. I'm not sure. Q. You're not sure?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not? A. Not really. Q. And isn't it also true that Mr. Urbank would take the lead for the Pension Fund in drafting trustee minutes, correct? A. Yes. Q. And in connection with the effort to prepare minutes, he too employed this practice of referring to the contribution rate as either a percentage or a percentage of wages, correct? A. It appears that way. Q. Do you have any reason to believe	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to what the trustees would do. Argue that. THE ARBITRATOR: Sustained. They were in the room, and they spoke it, and you can argue whether they heard it. Q. Let me ask you this. Isn't it true that you also employed a practice of referring to the plan's contributions as a percentage of wages? A. I'm not sure. Q. You're not sure? A. No.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not? A. Not really. Q. And isn't it also true that Mr. Urbank would take the lead for the Pension Fund in drafting trustee minutes, correct? A. Yes. Q. And in connection with the effort to prepare minutes, he too employed this practice of referring to the contribution rate as either a percentage or a percentage of wages, correct? A. It appears that way. Q. Do you have any reason to believe that was not the case?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to what the trustees would do. Argue that. THE ARBITRATOR: Sustained. They were in the room, and they spoke it, and you can argue whether they heard it. Q. Let me ask you this. Isn't it true that you also employed a practice of referring to the plan's contributions as a percentage of wages? A. I'm not sure. Q. You're not sure? A. No. Q. Why don't we turn to Exhibit 150.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not? A. Not really. Q. And isn't it also true that Mr. Urbank would take the lead for the Pension Fund in drafting trustee minutes, correct? A. Yes. Q. And in connection with the effort to prepare minutes, he too employed this practice of referring to the contribution rate as either a percentage or a percentage of wages, correct? A. It appears that way. Q. Do you have any reason to believe that was not the case? A. No.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to what the trustees would do. Argue that. THE ARBITRATOR: Sustained. They were in the room, and they spoke it, and you can argue whether they heard it. Q. Let me ask you this. Isn't it true that you also employed a practice of referring to the plan's contributions as a percentage of wages? A. I'm not sure. Q. You're not sure? A. No. Q. Why don't we turn to Exhibit 150. And why don't you turn to Exhibit A, it
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not? A. Not really. Q. And isn't it also true that Mr. Urbank would take the lead for the Pension Fund in drafting trustee minutes, correct? A. Yes. Q. And in connection with the effort to prepare minutes, he too employed this practice of referring to the contribution rate as either a percentage or a percentage of wages, correct? A. It appears that way. Q. Do you have any reason to believe that was not the case? A. No. Q. And he too employed this practice	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to what the trustees would do. Argue that. THE ARBITRATOR: Sustained. They were in the room, and they spoke it, and you can argue whether they heard it. Q. Let me ask you this. Isn't it true that you also employed a practice of referring to the plan's contributions as a percentage of wages? A. I'm not sure. Q. You're not sure? A. No. Q. Why don't we turn to Exhibit 150. And why don't you turn to Exhibit A, it begins at page 3437. This was an exhibit
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross only did you employ, but Mr. Urbank also employed it in connection with this Fund, correct? A. I cannot speak for him. Q. Do you have any reason to believe he did not? A. Not really. Q. And isn't it also true that Mr. Urbank would take the lead for the Pension Fund in drafting trustee minutes, correct? A. Yes. Q. And in connection with the effort to prepare minutes, he too employed this practice of referring to the contribution rate as either a percentage or a percentage of wages, correct? A. It appears that way. Q. Do you have any reason to believe that was not the case? A. No.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Egan - Cross Q. And the trustees of the Fund routinely would listen to the Segal team characterize the contribution rate as either a percentage or a percentage of wages, correct? MR. RICHMAN: Objection as to what the trustees would do. Argue that. THE ARBITRATOR: Sustained. They were in the room, and they spoke it, and you can argue whether they heard it. Q. Let me ask you this. Isn't it true that you also employed a practice of referring to the plan's contributions as a percentage of wages? A. I'm not sure. Q. You're not sure? A. No. Q. Why don't we turn to Exhibit 150. And why don't you turn to Exhibit A, it

	D 110F		D 1100
	Page 1125		Page 1126
1	Egan - Cross	1	Egan - Cross
2	the board. It's dated April 4, 2014. Do	2	Q. And it was prepared after The New
3	you see that?	3	York Times had challenged the assessment on
4	A. Yes.	4	the ground that it misstated contribution
5	Q. And let me draw your attention to	5	base units, correct?
6	the first paragraph, and in the middle of	6	A. Say that again.
7	the first paragraph there is a sentence	7	Q. And this memorandum was created
8 9	that begins with the word assuming, do you	8 9	after The Times had challenged the
10	see that? Assuming that all employers?	10	assessment on the ground that the
11	A. Yes.	11	assessment and determination of partial
12	Q. Okay, and in this paragraph it refers to contribution rate increases from	12	withdrawal liability had misstated
13		13	contribution base units, correct?
14	eight percent to 11.8 percent of the shift	14	A. Yes.
15	rate, do you see that? A. Yes.	15	Q. Did that withdrawal liability
16		16	dispute play any role in your and
17	Q. Did any of the prior memoranda that you had prepared to the board of	17	Mr. Urbank's decision to change the wording about contribution rate?
18	trustees use that formulation, percent of	18	
19	shift rate?	19	A. It may have.Q. You don't remember one way or the
20	A. Not that I recall.	20	other?
21	Q. And this memorandum was prepared	21	A. It made me revisit how we phrase
22	after the assessment of the withdrawal	22	it.
23	liability against The New York Times,	23	Q. So it did play a role?
24	correct?	24	A. Yes.
25	A. I think so.	25	Q. And in deciding to make this
	20, 2,0000		Q. That in deciding to make this
	Page 1127		Page 1128
1	Page 1127 Egan - Cross	1	Page 1128 Egan - Cross
1 2	Egan - Cross change, did you consult with any of the	1 2	
	Egan - Cross		Egan - Cross
2	Egan - Cross change, did you consult with any of the	2	Egan - Cross withdrawal liability assessments?
2	Egan - Cross change, did you consult with any of the trustees beforehand? A. No. Q. Did you consult with anybody at	2 3 4 5	Egan - Cross withdrawal liability assessments? MR. RICHMAN: Objection, we
2 3 4 5 6	Egan - Cross change, did you consult with any of the trustees beforehand? A. No. Q. Did you consult with anybody at the Fund beforehand?	2 3 4 5 6	Egan - Cross withdrawal liability assessments? MR. RICHMAN: Objection, we went through this the first time around in great detail, which if I remember correctly you pleaded with me
2 3 4 5 6 7	Egan - Cross change, did you consult with any of the trustees beforehand? A. No. Q. Did you consult with anybody at the Fund beforehand? A. No.	2 3 4 5 6 7	Egan - Cross withdrawal liability assessments? MR. RICHMAN: Objection, we went through this the first time around in great detail, which if I remember correctly you pleaded with me not to go through every one of them.
2 3 4 5 6 7 8	Egan - Cross change, did you consult with any of the trustees beforehand? A. No. Q. Did you consult with anybody at the Fund beforehand? A. No. Q. Did you and Mr. Urbank consult	2 3 4 5 6 7 8	Egan - Cross withdrawal liability assessments? MR. RICHMAN: Objection, we went through this the first time around in great detail, which if I remember correctly you pleaded with me not to go through every one of them. MR. MILLER: I will withdraw the
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		1	
	Page 1129		Page 1130
1	Egan - Cross	1	Egan - Cross
2	Q. Yes, when you testified earlier	2	participation in the Fund?
3	this year in this proceeding.	3	MR. RICHMAN: Objection.
4	A. Yes.	4	That's privileged.
5	Q. Prior to your giving that	5	MR. MILLER: Schulte Roth is not
6	testimony, did you meet with attorneys from	6	counsel for the witness. There is no
7	Schulte Roth to prepare for that testimony?	7	indication of a mutual defense
8	A. Probably.	8	agreement. And beyond that, even to
9	Q. Do you have any reason to believe	9	the extent that there may be some
10	you didn't?	10	privilege here, and we don't think
11	A. No.	11	there is, obviously I'm asking these
12	Q. Did you review any documents in	12	questions as it relates to prior
13	connection with preparing for that	13	conduct and the issue of sanctions,
14	testimony back in February?	14	and in connection with that issue, I
15	A. I don't remember.	15	don't think that the privilege here to
16	Q. Did you review any documents in	16	the extent it exists is sufficiently
17	preparing for that testimony that discussed	17	strong to prohibit my asking questions
18	or made mention of El Diario?	18	about the extent to which this was
19	A. I have no idea. I don't	19	discussed.
20	remember.	20	MR. RICHMAN: There is a
21	Q. Did you review any trustee	21	privilege. They were the actuary to
22	minutes that referenced El Diario?	22	the Fund, and that privilege carries
23	A. I have no idea.	23	over to the Fund and our
24	Q. Did you discuss with the Schulte	24	representation of the Fund. With
25	Roth attorney El Diario and El Diario's	25	respect to this ridiculous notion of
	Page 1131		Page 1132
	Page 1131		Page 1132
1	Egan - Cross	1	Egan - Cross
2	Egan - Cross sanctions, I will remind everybody	2	Egan - Cross privilege that extends to the actuary
2 3	Egan - Cross sanctions, I will remind everybody that it was your opinion that said	2 3	Egan - Cross privilege that extends to the actuary in connection with decisions about
2 3 4	Egan - Cross sanctions, I will remind everybody that it was your opinion that said that they hadn't asked for documents	2 3 4	Egan - Cross privilege that extends to the actuary in connection with decisions about legal advice to give to the trustees,
2 3 4 5	Egan - Cross sanctions, I will remind everybody that it was your opinion that said that they hadn't asked for documents relating to contribution base units,	2 3 4 5	Egan - Cross privilege that extends to the actuary in connection with decisions about legal advice to give to the trustees, the preparation of this witness for
2 3 4 5 6	Egan - Cross sanctions, I will remind everybody that it was your opinion that said that they hadn't asked for documents relating to contribution base units, and this would be a document that	2 3 4 5 6	Egan - Cross privilege that extends to the actuary in connection with decisions about legal advice to give to the trustees, the preparation of this witness for testimony falls outside of that scope.
2 3 4 5 6 7	Egan - Cross sanctions, I will remind everybody that it was your opinion that said that they hadn't asked for documents relating to contribution base units, and this would be a document that would fall within that range. They	2 3 4 5 6 7	Egan - Cross privilege that extends to the actuary in connection with decisions about legal advice to give to the trustees, the preparation of this witness for testimony falls outside of that scope. And again beyond that point, I don't
2 3 4 5 6 7 8	Egan - Cross sanctions, I will remind everybody that it was your opinion that said that they hadn't asked for documents relating to contribution base units, and this would be a document that would fall within that range. They can argue whatever they want, we're	2 3 4 5 6 7 8	Egan - Cross privilege that extends to the actuary in connection with decisions about legal advice to give to the trustees, the preparation of this witness for testimony falls outside of that scope. And again beyond that point, I don't think it holds up in connection with
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	7 1100		7 1104
	Page 1133		Page 1134
1	Egan - Cross	1	Egan - Cross
2	MR. RICHMAN: But she was	2	that the Fund was fully aware before
3	testifying about services she provided	3	there was a production request that
4	to the Fund.	4	they had this El Diario information
5	THE ARBITRATOR: Okay, I have	5	and they said we're not going to turn
6	to acknowledge that I have never dealt	6	it over. We're going to use it just
7	with an issue of privilege as it	7	at the hearing to surprise them.
8	relates to requests for sanctions.	8	MR. RICHMAN: Well, there are
9	This is a new wrinkle.	9	two things to that. And one, I just
10	Let me ask you this. Let's posit	10	want to make sure I'm right on my
11	for a moment that you had full	11	facts. What was not produced were the
12	discussions with people in that time	12	minutes. And the even if we had
13	frame about El Diario. How would they	13	the discussion with her, it would have
14	be able to establish that fact?	14	been a rebuttal to Mr. Hayes'
15	MR. RICHMAN: First of all I	15	testimony.
16	don't think it's relevant. But the	16	THE ARBITRATOR: I'm not
17	answer is what time period are you	17	suggesting necessarily that you had
18	talking about?	18	the discussions and hence the
19	THE ARBITRATOR: Prior to	19	sanctions are appropriate. I'm just
20	February of 2015. Her prior	20	asking about how you establish a
21	testimony.	21	factual predicate for an argument if
22	MR. RICHMAN: And you want to	22	you can't ask the question about
23	know how would they establish the fact	23	whether it was discussed.
24	of whether	24	MR. RICHMAN: Well, whether it
25	THE ARBITRATOR: Let's posit	25	was discussed is there was an
	Page 1135		Page 1136
1	Page 1135	1	Page 1136
1 2	Egan - Cross	1	Egan - Cross
2	Egan - Cross estimate that had been turned over to	2	Egan - Cross THE ARBITRATOR: Well, I don't
2	Egan - Cross estimate that had been turned over to them.	2 3	Egan - Cross THE ARBITRATOR: Well, I don't want to call this witness back. I
2 3 4	Egan - Cross estimate that had been turned over to them. THE ARBITRATOR: And that goes	2 3 4	Egan - Cross THE ARBITRATOR: Well, I don't want to call this witness back. I will allow you to answer the question
2 3 4 5	Egan - Cross estimate that had been turned over to them. THE ARBITRATOR: And that goes to the merits of whether or not I	2 3 4 5	Egan - Cross THE ARBITRATOR: Well, I don't want to call this witness back. I will allow you to answer the question and we can brief it if need be.
2 3 4 5 6	Egan - Cross estimate that had been turned over to them. THE ARBITRATOR: And that goes to the merits of whether or not I think there was anything done in bad	2 3 4 5 6	Egan - Cross THE ARBITRATOR: Well, I don't want to call this witness back. I will allow you to answer the question and we can brief it if need be. MR. RICHMAN: What's the
2 3 4 5 6 7	Egan - Cross estimate that had been turned over to them. THE ARBITRATOR: And that goes to the merits of whether or not I think there was anything done in bad faith and the sanctions.	2 3 4 5 6 7	Egan - Cross THE ARBITRATOR: Well, I don't want to call this witness back. I will allow you to answer the question and we can brief it if need be. MR. RICHMAN: What's the question?
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	Page 1137	Page 1138
1	Egan - Cross	¹ Egan - Cross
2	discussed with the witness to refresh	² FURTHER CROSS-EXAMINATION BY MR. MILLER:
3	her recollection and prepare her for	³ Q. Ms. Egan, I'm going to read you
4	what you have dubbed surprise	an excerpt from your prior testimony on
5	testimony.	5 February 24, 2015, and I'm going to ask you
6	THE ARBITRATOR: Go ahead. You	6 if that refreshes your recollection about
7	can have your question. Go ahead.	whether El Diario was discussed in
8	THE REPORTER: "Did you discuss	8 preparing for that testimony. So what I'd
9	with the Schulte Roth attorney El	9 like you to do is turn to tab two of the
10		hearing transcript that I handed to you,
11	Diario and El Diario's participation in the Fund?"	nearing transcript that I handed to you,
12		and then turn to page 050 of the nearing.
13	THE WITNESS: When?	The you mere:
14	FURTHER EXAMINATION BY MR. MILLER:	71. 105.
	Q. In preparation for your testimony	Q. Thi going to begin at time 5 and
15	in February.	read a series of questions and answers into
16	A. I don't remember exactly.	the record.
17	MR. MILLER: Mr. Arbitrator,	17 "Question: Now, was the El
18	let's do the following. Can we take a	Diario estimate ever discussed at a Pension
19	short break? I think I'm basically	Fund meeting?
20	done. We'll discuss this issue and	²⁰ "Answer: I believe this one was
21	see if there is any necessary	discussed at a Pension Fund meeting.
22	followup. If there will be followup,	"Question: Do you know what the
23	I will anticipate it will be just a	nature of the discussion was?
24	couple of minutes.	²⁴ "Answer: We reported the
25	(Recess taken: 4:01-4:13 p.m.)	calculation was done.
	Page 1139	Page 1140
1	Page 1139	Page 1140
1	Egan - Cross	1 Egan - Cross
2	Egan - Cross "Question: Okay, and was there	Egan - Cross anybody, anyone was given the assignment to
2	Egan - Cross "Question: Okay, and was there any discussion at the meeting other than	Egan - Cross anybody, anyone was given the assignment to determine whether it occurred. I think it
2 3 4	Egan - Cross "Question: Okay, and was there any discussion at the meeting other than your report?	Egan - Cross anybody, anyone was given the assignment to determine whether it occurred. I think it was just noted that the shifts need to be
2 3 4 5	Egan - Cross "Question: Okay, and was there any discussion at the meeting other than your report? "Answer: My recollection is	Egan - Cross anybody, anyone was given the assignment to determine whether it occurred. I think it was just noted that the shifts need to be kept track of to see if there is a
2 3 4 5 6	Egan - Cross "Question: Okay, and was there any discussion at the meeting other than your report? "Answer: My recollection is that after our report, there was further	Egan - Cross anybody, anyone was given the assignment to determine whether it occurred. I think it was just noted that the shifts need to be kept track of to see if there is a possibility."
2 3 4 5 6 7	Egan - Cross "Question: Okay, and was there any discussion at the meeting other than your report? "Answer: My recollection is that after our report, there was further discussion of the possibility of El Diario	Egan - Cross anybody, anyone was given the assignment to determine whether it occurred. I think it was just noted that the shifts need to be kept track of to see if there is a possibility." Ms. Egan, does this testimony
2 3 4 5 6 7 8	Egan - Cross "Question: Okay, and was there any discussion at the meeting other than your report? "Answer: My recollection is that after our report, there was further discussion of the possibility of El Diario incurring a partial withdrawal liability,	Egan - Cross anybody, anyone was given the assignment to determine whether it occurred. I think it was just noted that the shifts need to be kept track of to see if there is a possibility." Ms. Egan, does this testimony refresh your recollection of whether in
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	Page 1141	Page 1142
1	Egan - Cross	¹ Egan - Cross
2	discussion, do you see that?	Q. Well, let me ask you
3	A. Yes.	MR. RICHMAN: Let her finish her
4	Q. And then it says it was noted, it	answer.
5	uses that phrase, it was noted that due to	⁵ Q. Are you done?
6	the reduction in shifts rather than a	6 A. I guess so.
7	complete withdrawal there may be partial	Q. So looking at the language in
8	withdrawal. As a result the Fund Office,	8 the minutes, again, it does not refresh
9	and then it uses the language will track	your recollection one way or the other
10	shifts, okay? Now let's look at your	whether you had a discussion about El
11	testimony. And the answer that you gave on	Diario in preparation for your testimony?
12	the bottom of 636 beginning at line 22, you	A. I don't remember exactly when my
13	also used the phrase, part of the	discussions were, with whom, when, about
14	discussion was that, quote, you need to	14 what.
15	track the shifts, and then again in the	Q. And do you think it's just
16	answer you gave on page 637 beginning at	essentially coincidence that you used
17	line 12, you said, I think it was just	language
18	noted that the shifts need to be kept track	MR. RICHMAN: Objection.
19	of. So in those two answers, you used	THE ARBITRATOR: Let him finish
20	language that was almost precisely the same	the question. Go ahead.
21	as the language in that paragraph in the	Q. You think that it is essentially
22	minutes.	coincidence that in connection with two of
23	A. But that's what you do for	the answers you gave, you used language
24	partial withdrawals, is you track the	that is the same as the language in
25	shifts.	the minutes?
	Page 11/13	Page 11//
1	Page 1143	Page 1144
1	Egan - Cross	¹ Egan - Redirect
2	Egan - Cross MR. RICHMAN: Objection, it's	Egan - Redirect MR. MILLER: Thank you. No
2	Egan - Cross MR. RICHMAN: Objection, it's argumentative, and she's already	Egan - Redirect MR. MILLER: Thank you. No additional questions.
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Page 1145 Page 1146 1 1 Egan - Redirect Egan - Redirect 2 2 long-term assumption of seven and a half whether your population goes up or down 3 3 into the future, maybe mortality, how percent. 4 4 Q. Now, in a lot of the projections people live or die. 5 5 you did you made assumptions. You need to Q. And how does population going up 6 6 and down figure into the projections? make assumptions to do projections, is that 7 7 correct? A. Well, what happens is there are 8 8 liabilities tied to people and there's A. Correct. 9 9 O. Okay. And one of the assumptions money tied to people. Liabilities that are 10 10 that you need to do to come up with to make owed and there's money coming in. Both of 11 11 a projection about the funding of a plan -them are tied to the numbers of people. 12 12 let me withdraw that, leading. Q. And let's talk about the money 13 13 Can you describe just generally, coming in. 14 14 A. Okay. not full-blown actuarial speak, but just 15 15 Q. When you talk about the money generally the assumptions that you need to 16 assume for this Pension Fund to make 16 coming in, the slideshows that Mr. Miller 17 17 projections about its financial condition showed you, you used the phrase 18 18 into the future? contribution rate or percentage of wages. 19 19 A. There's a lot of assumptions. And why did you use that? 20 20 Q. Let's talk about the major A. What did we mean by that? 21 21 Q. Yeah, why did you use that to assumptions. 22 22 describe the contributions coming into the A. Major assumptions would be -- in 23 23 the projections would be your investment Fund? 24 24 return into the future, maybe how your A. The way -- our understanding of 25 25 contributions will change into the future, how the Fund makes contributions, it's a Page 1147 Page 1148 1 1 Egan - Redirect Egan - Redirect 2 2 percentage of the wage rate times the came about, but we thought it would be 3 3 shift. Since employers have several clearer to express it more specifically, 4 4 different types of wage rates and they're since there have been issues. 5 5 at all different shifts, it was always hard Q. When you say since there have 6 6 to get that kind of information by each been issues, what was the issue that had 7 7 employer, so we would focus on the come up? 8 8 contribution rate, eight percent, which was A. The issue? 9 9 the easiest way to talk about Q. I'm going to take the pain and 10 10 leading and he'll -- so the The New York contributions, so we would talk about that 11 11 eight percent which sometimes changed to Times withdrawal liability? 12 12 six percent, would go back up to eight A. Yes. 13 13 Q. So as I understand your percent. So we would focus on the eight 14 percent. It was the easiest way to talk 14 testimony, correct me if I'm wrong, that 15 15 about the contributions. you thought it would be clearer since that 16 16 issue came up? Q. Let's turn to Exhibit 128, 17 17 please. And let me ask you, Mr. Miller A. Clearer, yes. 18 18 pointed out that after withdrawal liability Q. Looking at 138, this is your memo 19 19 was assessed by the Fund against The New and Mr. Urbank's, I'm on 3320. So this is 20 York Times, you used a different phrasing, 20 for zone certification, right? 21 21 right, for contributions? A. Yes. 22 22 A. Yes. Q. And 3320, if you look at 23 23 Q. And was it you or Mr. Urbank who paragraph 4, the last sentence says please 24 24 decided to use that phrasing? note that on this point we need an

assumption for both the average shifts per

25

A. I don't remember exactly how it

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	Page 1149		Page 1150
1	Egan - Redirect	1	Egan - Redirect
2	active participant, projected number of	2	you were the actuary to the Fund?
3	active participants and the expected wage	3	A. No.
4	increases in future years since	4	Q. Can you take a look at
5	contributions are a percentage of wages.	5	Exhibit 138, please.
6	Do you see that.	6	Now, if you flip past the agenda
7	A. Yes.	7	you'll see the minutes of an April 6th,
8	Q. Why did you include average	8	2011 meeting.
9	shifts per active participant in this?	9	A. Okay.
10	A. Because it was my understanding	10	Q. And I think you've testified
11	that the contributions were made by a	11	already that there is no reason to doubt
12	certain percentage of the wage rate times	12	that you were there?
13	the shifts per active employee.	13	A. Right.
14	Q. Okay. And it was your	14	Q. And if you'd look at the bottom
15	understanding at the time you wrote this	15	of page 2, and it's right under the
16	memo?	16	redacted. Do you see where it says
17	A. Yes. And this was the first year	17	redacted, the bottom of page 2, big bold
18	we were requesting this data.	18	letters?
19	Q. And did your understanding of the	19	A. Oh, yes, I see.
20	way the contribution obligation of the	20	Q. It says Mr. Murphy. Who is
21	employers contributing to the Fund, did	21	Mr. Murphy, by the way?
22	that understanding change?	22	A. He was a I'm assuming he was a
23	A. No.	23	trustee. I'm not sure if he still is
24	Q. I'm going to rephrase the	24	because I'm not involved with the Pension
25	question. Did that change at any time that	25	Fund.
	question. Did that change at any time that		i und.
	Page 1151		Page 1152
1	Page 1151	1	Page 1152
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	Page 1153		Page 1154
1	Egan - Redirect	1	Egan - Recross
2	largest contributing employers for the	2	Q. Do you know why?
3	pension plan, do you see that?	3	A. No.
4		4	MR. RICHMAN: We have no
5	A. Yes, I do see that.	5	further questions.
6	Q. Do you remember that request?	6	
7	A. I don't remember the details of	7	(Recess taken: 4:37-4:53 p.m.)
8	that, no.	8	RECROSS-EXAMINATION BY MR. MILLER:
	Q. Forget the details. Do you		Q. Ms. Egan, can you turn your
9	remember that he made this request?	9	attention to Exhibit 134, and then why
10	A. I don't remember exactly.	10	don't you turn your attention to Exhibit F
11	Q. Okay. Do you have any reason to	11	to those minutes. 134 is the minutes of
12	believe that these minutes are not	12	May 19, 2010, and there's a letter from
13	accurate?	13	a memo from you and Mr. Urbank to the
14	A. No.	14	trustees. It's at Fund 3356. And this is
15	Q. And was there a discussion	15	another data request for a zone
16	between Mr. Murphy and you or anybody else	16	certification analysis, correct?
17	at the meeting about his request for	17	A. Yes.
18	estimated shift totals?	18	Q. And if you turn to page 2 of the
19	A. I don't know because I don't	19	letter, under paragraph 4 of projected
20	remember.	20	industry activity, you are again asking for
21	Q. I think that clarifies the I	21	information to use in that years's zone
22	think we got it nailed down, okay.	22	status projection, correct?
23	And then did you ever get	23	A. Yes.
24	estimated shift totals through 2020?	24	Q. And you'll note that in this
25	A. Not that I remember.	25	letter, the 2010 letter, in the last
			· · · · · · · · · · · · · · · · · · ·
			Page 1156
1	Page 1155	1	-
1	Egan - Recross	1 2	Egan - Recross
2	Egan - Recross sentence, you do not ask for average shift	2	Egan - Recross A. Yes.
2	Egan - Recross sentence, you do not ask for average shift per active participant, correct?	2	Egan - Recross A. Yes. Q. And the reason I take it that you
2 3 4	Egan - Recross sentence, you do not ask for average shift per active participant, correct? A. Yes.	2 3 4	Egan - Recross A. Yes. Q. And the reason I take it that you no longer sought that information following
2 3 4 5	Egan - Recross sentence, you do not ask for average shift per active participant, correct? A. Yes. Q. Now let's turn to Exhibit 144.	2 3 4 5	Egan - Recross A. Yes. Q. And the reason I take it that you no longer sought that information following the letter in 2008 was that you never
2 3 4 5 6	Egan - Recross sentence, you do not ask for average shift per active participant, correct? A. Yes. Q. Now let's turn to Exhibit 144. Those are the minutes of the July 30, 2013	2 3 4 5 6	Egan - Recross A. Yes. Q. And the reason I take it that you no longer sought that information following the letter in 2008 was that you never received estimated shift total information,
2 3 4 5 6 7	Egan - Recross sentence, you do not ask for average shift per active participant, correct? A. Yes. Q. Now let's turn to Exhibit 144. Those are the minutes of the July 30, 2013 meeting. Okay, and let's turn to an	2 3 4 5 6 7	Egan - Recross A. Yes. Q. And the reason I take it that you no longer sought that information following the letter in 2008 was that you never received estimated shift total information, correct?
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	Page 1157		Page 1158
1	Egan - Recross	1	Egan - Recross
2	A. Yes, I think I just said it.	2	A. No.
3	Q. Correct, testimony before	3	Q. And why is that?
4	Mr. Richman.	4	A. Because we assume that everyone
5	A. I think I remember.	5	earns one pension credit into the future.
6	Q. Isn't it true that in connection	6	That's one of our assumptions.
7	with this Pension Fund, participants earn	7	Q. So that's because you essentially
8	annual isn't it true that in connection	8	created a mechanic, an assumption that
9	with the NMDU Fund, participants accrue and	9	avoids the need to get shift information in
10	earn pension credits annually by reference	10	projecting future liabilities, correct?
11	to the shifts that they work?	11	A. Yes.
12	A. I believe pension credits are	12	Q. But I asked you a different
13	based on shifts.	13	question. The question I asked you was
14	Q. And isn't it true that in order	14	putting aside the mechanic that Segal
15	to earn a year of pension credit under this	15	employed in connection with this NMDU Fund,
16	plan, you need a hundred shifts?	16	as a general matter, given how pension
17	A. I don't remember exactly how many	17	accruals are earned, it would be helpful in
18	•	18	
19	shifts you need to earn a pension.	19	projecting future liabilities to obtain shift information?
20	Q. But again to confirm, but you	20	
21	need shifts to earn pension credit,	21	A. Helpful to me or to someone else?
22	correct?	22	Q. Helpful to the actuary in
23	A. Yes.	23	projecting future liabilities.
24	Q. And therefore shift information	24	A. I did not need shift information
25	would be helpful in projecting the future	25	to project future liabilities.
23	liabilities of this Pension Fund, correct?	23	Q. And that's because you couldn't
	Page 1159		Page 1160
1	_	1	
1 2	Egan - Recross get shift information, correct?	1 2	Page 1160 Egan - Recross THE WITNESS: When I calculate a
	Egan - Recross		Egan - Recross
2	Egan - Recross get shift information, correct?	2	Egan - Recross THE WITNESS: When I calculate a liability, I ask the Fund for information
2	Egan - Recross get shift information, correct? A. No, because we assumed everyone	2	Egan - Recross THE WITNESS: When I calculate a
2 3 4	Egan - Recross get shift information, correct? A. No, because we assumed everyone earned one pension credit into the future. So we never asked for it to do liabilities.	2 3 4	Egan - Recross THE WITNESS: When I calculate a liability, I ask the Fund for information to calculate liability. Shift is not information I need. I ask them for the
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2 3 4 5 6	Egan - Recross get shift information, correct? A. No, because we assumed everyone earned one pension credit into the future. So we never asked for it to do liabilities. Q. If somebody worked let's	2 3 4 5 6	Egan - Recross THE WITNESS: When I calculate a liability, I ask the Fund for information to calculate liability. Shift is not information I need. I ask them for the pension credits that a participant has. I don't need to use shifts because they give
2 3 4 5 6 7	Egan - Recross get shift information, correct? A. No, because we assumed everyone earned one pension credit into the future. So we never asked for it to do liabilities. Q. If somebody worked let's assume that you needed a hundred shifts to	2 3 4 5 6 7	Egan - Recross THE WITNESS: When I calculate a liability, I ask the Fund for information to calculate liability. Shift is not information I need. I ask them for the pension credits that a participant has. I
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Recross get shift information, correct? A. No, because we assumed everyone earned one pension credit into the future. So we never asked for it to do liabilities. Q. If somebody worked let's assume that you needed a hundred shifts to get a year of pension service, okay? A. Okay. Q. And if an employee worked 90 shifts, that employee would not get a year of pension credit, correct? A. Under that scenario, yes. Q. Right. And under the mechanic that you employed, your mechanic did not distinguish between employees who did not earn sufficient shifts to obtain a year of pension accrual, correct? A. Repeat the question. (The pending question was read.) THE WITNESS: It's very confusing, what you're asking, because I'm not sure what you're asking.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Egan - Recross THE WITNESS: When I calculate a liability, I ask the Fund for information to calculate liability. Shift is not information I need. I ask them for the pension credits that a participant has. I don't need to use shifts because they give me the pension credits that a participant has. I don't need to calculate that the person had 900 shifts so they didn't earn the pension credit. They give me the pension credit. I don't need the shift information. They're doing that calculation. Q. But on occasion you project future liabilities and future accruals, correct? A. Yes. Q. And in connection with the projection of future accruals, you don't rely on past accruals, do you? A. We assume that each participant earns a full pension credit each year into

	Page 1161		Page 1162
1	Egan - Recross	1	Egan - Redirect
2	get that information	2	correct?
3	Q. Okay. Now let's go back to my	3	A. I assume that each participant
4	question.	4	will earn a pension credit. I don't say
5	A in calculating liabilities for	5	that now three of the four that are there
6	the Pension Fund.	6	are going to not get the pension credit. I
7	Q. Now let's go back to my question.	7	say they all are getting a pension credit.
8	You assume each participant will earn a	8	Q. Correct. And you make the
9	year of pension service in the future,	9	assumption that they will all get the
10	correct?	10	pension credit because you don't make an
11	A. Yes.	11	assumption about the number of shifts they
12	Q. You make that assumption	12	will have in the future, right?
13	notwithstanding whether that participant	13	A. Yes, I guess. I'm not sure.
14	will earn sufficient shifts in a year in	14	Q. Yes?
15		15	
16	the future to actually get that pension	16	A. We don't make an assumption about the number of shifts into the future.
17	service credit, correct? Yes or no.	17	
18	A. Whether they do or not, it comes	18	MR. MILLER: I have no further
19	out in the next year's calculation. You		questions.
20	have a gain or a loss. I'm not sure where	19 20	REDIRECT EXAMINATION BY MR. RICHMAN:
21	there's a question. Maybe I'm not	20	Q. This will be quick, I promise.
22	Q. Let me try it one more time and		So Mr. Miller showed you Exhibits
23	then I'll give up.	22	134, 144 and 150, and he showed you that
	You make a projection about the	23	you weren't in those exhibits asking for
24 25	number of participants that will earn	24	information about shifts, and he asked you
23	service credits each year into the future,	25	why not and you said you realized you did
	Page 1163		Page 1164
1	_	1	_
1	Egan - Redirect	1 2	Egan - Redirect
2	not need that information. Why?	3	MR. RICHMAN: That's all I
	A. Because the way we project		have.
4	contributions is not the way contributions	4	MR. MILLER: That's all I have.
5	are made. It is not taking by the number	5	THE ARBITRATOR: Thank you very
6 7	of people times the percentage times the	6 7	much, all.
	wage rate times the shifts. It is just		(Proceedings adjourned: 5:08 p.m.)
8	taking last year's contribution dollars and	8	
9	projecting those dollar amounts into the	10	
10	future by either increasing or decreasing		
11	them because of events that are expected to	11	
12	happen in the future. For instance if you	12	
13	expect the number of people to go down 10	13	
14	percent, we take last year's contribution	14	
15	dollars and reduce it by the 10 percent	15	
1 /	going into the future. We expect if the	16	
16		1	
17	trustees expect wage increases of two	17	
17 18	trustees expect wage increases of two percent a year, we increase the	18	
17 18 19	trustees expect wage increases of two percent a year, we increase the contribution dollars by two percent a year.	18 19	
17 18 19 20	trustees expect wage increases of two percent a year, we increase the contribution dollars by two percent a year. So there is no need to get wage rate	18 19 20	
17 18 19 20 21	trustees expect wage increases of two percent a year, we increase the contribution dollars by two percent a year. So there is no need to get wage rate information or shift rate information or	18 19 20 21	
17 18 19 20 21 22	trustees expect wage increases of two percent a year, we increase the contribution dollars by two percent a year. So there is no need to get wage rate information or shift rate information or contribution rate information to project	18 19 20 21 22	
17 18 19 20 21 22 23	trustees expect wage increases of two percent a year, we increase the contribution dollars by two percent a year. So there is no need to get wage rate information or shift rate information or contribution rate information to project contributions. We just need to know what	18 19 20 21 22 23	
17 18 19 20 21 22 23 24	trustees expect wage increases of two percent a year, we increase the contribution dollars by two percent a year. So there is no need to get wage rate information or shift rate information or contribution rate information to project contributions. We just need to know what changes are happening to those dollar	18 19 20 21 22 23 24	
17 18 19 20 21 22 23	trustees expect wage increases of two percent a year, we increase the contribution dollars by two percent a year. So there is no need to get wage rate information or shift rate information or contribution rate information to project contributions. We just need to know what	18 19 20 21 22 23	

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Page 1	1165	Page 1166
1		1
² CERTIFICATE		2 INDEX
CERTIFICATE 3		3
4 STATE OF NEW YORK)		4 TERRY HAYES
5) ss.:		5 DIRECT EXAMINATION BY MR. MILLER 963
6 COUNTY OF NEW YORK)		6 CROSS-EXAMINATION BY MR. RICHMAN 1001
7 COUNTI OF NEW TORK		7 REDIRECT EXAMINATION BY MR. 1070
8 I, DAVID HENRY, a Certified Court		8 MILLER
9 Reporter and Notary Public within and for		9 RECROSS-EXAMINATION BY MR. 1072
the State of New York, do hereby certify:		10 RICHMAN
That the foregoing is a true and	.	11
accurate transcript of the proceedings		12 ROSANA EGAN
herein.		13 CONTINUED CROSS-EXAMINATION BY 1074
14 I further certify that I am not		14 MR. MILLER
related to any of the parties to this		15 REDIRECT EXAMINATION BY MR. 1144
action by blood or marriage; and that I ar	n	16 RICHMAN
in no way interested in the outcome of th		17 RECROSS-EXAMINATION BY MR. 1154
18 matter.	15	18 MILLER
19 IN WITNESS WHEREOF, I have her	ennto	19 REDIRECT EXAMINATION BY MR. 1162
set my hand this 29th day of September,	Cuiito	20 RICHMAN
21 2015.		21
22		22
23		23
24		24
25 DAVID HENRY		25

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Page 1167
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2
               AMERICAN ARBITRATION ASSOCIATION
     ----X
    THE NEW YORK TIMES COMPANY,
4
5
           A Petitioner,
                     V.
7
    NEWSPAPER and MAIL DELIVERERS'-PUBLISHERS'
    PENSION FUND,
                   Claimant.
10
11
12
13
                       DAY 6 - VOLUME VI
14
                         ARBITRATION
15
                     New York, New York
16
                 Wednesday, October 7, 2015
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20
    REPORTED BY: BARBARA R. ZELTMAN
21
22
                 Professional Stenographic Reporter
23
24
  Job Number: 97106
25
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		Page 1169
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	October 7, 2015 9:35 a.m. Arbitration proceedings held at American Arbitration Association, 120 Broadway, New York, New York, before BARBARA R. ZELTMAN, a Professional Stenographic Reporter and Notary Public within and for the State of New York.	A P P E A R A N C E S: ARBITRATOR: MARK IRVINGS, ESQ. 24 Elba Street Brookline, Massachusetts 02446 JONES DAY Attorneys for Petitioner 51 Louisiana Avenue, N.W. Washington, D.C. 20001 BY: EVAN MILLER, ESQ. MIGUEL EATON, ESQ. YAAKOV ROTH, ESQ. SCHULTE ROTH & ZABEL Attorneys for the Claimant S1 SCHULTE ROTH & ZABEL Attorneys for the Claimant S19 Third Avenue New York, New York 10022 BY: RONALD RICHMAN, ESQ., MAX GARFIELD, ESQ., and ADAM GARTNER, ESQ.
23 24 25	Page 1170	23 ALSO PRESENT: Jeffrey Zomper 24 Thomas Bentvena 25 Page 1171
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	(Whereupon, the following proceedings were had:) MR. RICHMAN: Are you ready? NEAL SCHELBERG, having been first duly sworn by Arbitrator Irving, Notary Public, was examined and testified as follows: DIRECT EXAMINATION BY MR. RICHMAN: Q You're a partner at Proskauer Rose, correct? A Yes. Q How long have you been a partner there? A I've been a partner MR. RICHMAN: I'll leave out through the preliminaries. MR. MILLER: I will object when I need to.	ARBITRATION - VOLUME VI Q And your specialization within that field? A I represent Taft-Hartley funds. Q And one of the funds is the NMDU Pension Fund? A Correct. Q How long have you been counsel to the NMDU Pension Fund? A Since 1991. Q Do you have a designation in terms as fund counsel, employer counsel, union counsel with respect to the fund? A I've been designated employer trustee counsel. Q Okay. And what does that mean as employer trustee counsel? A Well, I'm co-counsel to the trust fund, but I was designated by the
21 22 23 24 25	A I've been a partner for 28 years. Q 28 years. Okay. And what's your field of practice? A Employees benefits.	publishers, who were the employers who contribute to the funds. Q But you are actually counsel to the Fund itself? A Correct, I'm co-counsel for the Fund.

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	Page 1172		Page 1173
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	Q And I'm sorry, how long have you	2	York Times as an important client of
3	been counsel to the NMDU Pension Fund?	3	Proskauer Rose's?
4	A Since, I believe, 1991.	4	MR. MILLER: Objection.
5	Q And was someone at Proskauer	5	Mr. Arbitrator, as you know,
6	counsel before that?	6	Mr. Schelberg is here today to testify on
7	A No, no. They were a new client in	7	a very narrow issue. And that issue
8	1991 and maybe 1990, 1991, 1992, some time	8	relates to Mr. Hayes' attendance at an
9	around then, after the Newspaper and Mail	9	October 11, 2011 trustee meeting.
10	Deliverers' Union and Maxwell Newspapers who	10	The line of questioning that
11	purchased the Daily News, after that sale, I	11	Mr. Richman is now engaging in is not
12	became counsel to the Funds.	12	foundational as it relates to the issue
13	Q Now, Proskauer is also counsel for	13	upon which Mr. Schelberg is here to
14	The New York Times, correct?	14	testify. It is unrelated and, therefore,
15	A Correct.	15	I object to this line of questioning.
16	Q Okay.	16	ARBITRATOR IRVINGS: What's the
17	What services does Proskauer	17	relevance?
18	provide to The New York Times?	18	MR. RICHMAN: The relevance
19	A I think we provide a range of	19	is arose yesterday and it's going
20	services, including providing labor	20	to go to the sanctions motion that we
21	employment advice.	21	are going to file.
22	Q Does Proskauer Rose provide	22	As you know, there will be
23	employer benefit proxies to its clients?	23	sanctions motions filed in every
24	A I think we do on occasion.	24	direction with respect to The New York
25	Q And would you characterize The New	25	Times having conversations with
	Q Thid would you characterize the New		Times having conversations with
	Page 1174		Page 1175
1	_	1	-
1 2	ARBITRATION - VOLUME VI	1 2	ARBITRATION - VOLUME VI
	ARBITRATION - VOLUME VI Mr. Schelberg.		ARBITRATION - VOLUME VI this case.
2	ARBITRATION - VOLUME VI Mr. Schelberg. There was, in the flurry of e-mail	2	ARBITRATION - VOLUME VI this case. Mr. Richman propounded and
2 3	ARBITRATION - VOLUME VI Mr. Schelberg. There was, in the flurry of e-mail yesterday, the defense raised by Evan	2 3	ARBITRATION - VOLUME VI this case. Mr. Richman propounded and proffered an affidavit from Mr. Schelberg
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	Page 1176		Page 1177
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	MR. RICHMAN: Let me eliminate	2	the Fund with respect to discovery.
3	so we can avoid this issue.	3	This is the same issue. It doesn't
4	MR. MILLER: But this goes way	4	involve the Proskauer firm, it doesn't
5	beyond the scope of the testimony	5	involve Mr. Schelberg. And, quite
6	that Mr. Schelberg indicated he would	6	frankly, I'm not asking we won't even
7	be focusing on and I believe you	7	be asking that Mr. Miller be sanctioned
8	understood was the purpose of the	8	individually.
9	testimony today.	9	But we have a situation where there
10	MR. RICHMAN: Let me just	10	is a obviously, been some very
11	respond to that because with a parade	11	difficult issues that have come up in the
12	of horrors that is coming down the	12	course of discovery and this is one of
13	track is not really the case.	13	them.
14	We are not filing a motion against	14	We wouldn't be here today had we
15	Neal Schelberg or the Proskauer Rose	15	just permitted Mr. Schelberg's affidavit
16	firm. We have absolutely zero intention	16	to come in.
17	to do that. Zero intention to do that.	17	ARBITRATOR IRVINGS: Let me cut
18	Our beef is with The New York	18	this short. I understand that
19	Times.	19	there's going to be potentially you
20	And the fact of the matter is at	20	raised an issue of sanctions
21	the last hearing, there was some of the	21	regarding documents with Mr. Hayes.
22	discovery taken very specifically that	22	That's within the context of this
23	was permitted to be taken with respect to	23	case
24	a sanctions motion that The New York	24	MR. RICHMAN: Right.
25	Times claims it's going to file against	25	ARBITRATOR IRVINGS: and
	Page 1178		Page 1179
1	_	1	Page 1179 ARBITRATION - VOLUME VI
1 2	ARBITRATION - VOLUME VI	1 2	-
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1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	indicated if it went into evidence,	2	Really, it was about logistics, what time I
3	Mr. Schelberg wouldn't even be here.	3	should be here. Those kinds of things.
4	So that's the issue that needs to	4	Q Did you have any discussion with
5	be for which live testimony needs to	5	Mr. Miller or anyone else from Jones Day
6	be taken and that issue only.	6	with respect to what you might provide in an
7	ARBITRATOR IRVINGS: To the	7	affidavit in connection with this hearing?
8	extent that reflecting on our	8	A A proposed affidavit was sent to
9	discussions yesterday there are	9	me.
10	questions about when that testimony	10	Q By Mr. Miller?
11	changed from the affidavit, this is a	11	A Correct.
12	fair grounds for inquiry.	12	Q And what was the nature of the
13	Go ahead.	13	proposed affidavit?
14	BY MR. RICHMAN:	14	A I didn't really go through it
15	Q Mr. Schelberg, so you had	15	because I knew my testimony would be here.
16	discussions with Jones Day yesterday?	16	I scanned it, but I didn't get to it in
17	A Yes.	17	detail.
18	Q With whom did you have discussions?	18	Relate my quick my quick review
19	A With Evan.	19	of it related to the trustee's meeting that
20	Q And how long were those	20	is apparently in question, the
21	discussions?	21	October 11th meeting, and how that meeting
22	A Brief.	22	was conducted, you know, kind of just
23	Q And what was the nature of those	23	confined to that.
24	discussions?	24	But again, I must tell you I looked
25	A We talked about today's hearing.	25	at it very quickly because I knew I had to
	Page 1182		Page 1183
			rage 1103
1	ARBITRATION - VOLUME VI	1	_
1 2	ARBITRATION - VOLUME VI be here, so I wasn't really focused on the	1 2	ARBITRATION - VOLUME VI
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2	be here, so I wasn't really focused on the affidavit.	2	ARBITRATION - VOLUME VI just want to talk about how minutes were taken, the process that went through to go
2	be here, so I wasn't really focused on the affidavit. Q Okay.	2	ARBITRATION - VOLUME VI just want to talk about how minutes were
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Page 1184 Page 1185 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 Q And so did Mr. Urbank take notes at but that's okay. 3 3 And we would spend an hour or so the meeting? 4 Correct. 4 going through the minutes, Murray had his 5 5 comments, I had my commends. I would Okav. 6 And what was your involvement in 6 incorporate our comments and send that draft 7 7 the process of creating minutes from the to my co-counsel for their review. 8 8 Co-counsel would then review the meeting? 9 9 A The process that we followed was minutes. They might have some changes, they 10 that John Urbank would actually prepare a 10 might accept it as is and we would work 11 draft set of minutes. 11 towards finalizing the minutes, send it back 12 The minutes would be sent to myself 12 to John. John would then present it at the 13 and to the then director of the Fund, Murray 13 next meeting that followed. 14 14 Schwartz. Q Okay. 15 Murray and I would then schedule a 15 Let me see if we can expedite this. 16 time after he and I individually reviewed 16 MR. RICHMAN: Could you show 17 the proposed draft and we would go through him the October 11th. It's in the 17 18 18 the minutes vellow book. 19 Q So when you say "schedule a time," 19 BY MR. RICHMAN: 20 was that actually a meeting or a telephone 20 Q Got it? 21 conference? 21 Yes. Α 22 A No. Murray and I would pick some, 22 Okay. 23 you know, evening, always happened around 23 So am I correct that you stated 24 6:00, I always wanted to get home and Murray 24 that you would spend an hour or two with 25 would keep me on the phone for a long time, 25 Murray on the phone to discuss the minutes? Page 1186 Page 1187 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 A Yeah, depending upon the length of So at this time with respect to 3 3 the minutes, the details that we needed to this meeting, would you have gone through 4 4 go through, some issues more complicated, the process that you described? 5 5 maybe they weren't stated properly. That A I would think so, ves. 6 kind of thing. So there was no hard and 6 Do you have any reason to believe 7 7 fast rule, but with Murray, they were always that you wouldn't have gone through that 8 8 long conversations. process? 9 9 Okay. All right. A I mean, that was the typical process that we followed. And I would have 10 And I'm sorry, you said that you 10 sent it to co-counsel? 11 11 no reason to believe that we didn't follow 12 12 A Correct. it. I couldn't tell you for a fact we did, 13 13 Who was the co-counsel at the time but I would think we would follow that 0 14 of the October 11, 2011 meeting? 14 process. 15 A It's indicated in the minutes under 15 Q And would you receive comments from 16 16 Present. co-counsel on a regular basis? 17 It was Warren Mangan, as well as 17 A Yeah, yeah. 18 Elizabeth O'Leary. 18 And so who incorporated those 0 19 Okay. And what was Mr. Mangan's 19 Q comments? 20 20 role? Typically, it would be me because, 21 I often ask myself that question, 21 you know, I was the one who had the 22 but he was designated as the Union trustee 22 conversation with the director and Murray 23 co-counsel. And Elizabeth functioned, I 23 was very meticulous about minutes and always 24 suppose, as Plan counsel. 24 had lots of comments, so I kind of had the 25 25 Q Okay. master draft.

Page 1188 Page 1189 1 ARBITRATION - VOLUME VI 1 ARBITRATION - VOLUME VI 2 2 Q And did you also send it to But, you know, it would depend, 3 3 depend upon the nature of the issues. Maybe co-counsel? 4 4 Elizabeth was more hands-on in a particular Α Yeah, it would have been sent to 5 5 issues so maybe she would have done it. all co-counsel and to the trustees and to 6 6 But they followed my lead, for the the director. 7 7 most part. And did you generally receive 8 8 comments back from the trustees with respect O Okay. 9 9 to the minutes? So if you incorporated the 10 10 comments, what would you then do? A If we did, it was at the meeting (Mr. Zomper enters the room.) 11 11 itself, so we typically did not get comments 12 12 I would incorporate the comments before the meeting. It could happen. 13 13 from co-counsel, produce a final draft, give More often than not, the trustees, 14 14 everyone the opportunity to have one final you know, spent a fair amount of time going 15 15 review of it. through the minutes before the meeting and 16 16 If I received no further comments, they came to the meeting and they could 17 17 I would then send them to John Urbank, who raise issues at the meeting. 18 18 would actually present it at the next Q If there were an issue raised at 19 19 meeting as the minutes of the preceding the meeting, the next meeting about the 20 meeting. 20 preceding meeting's minutes, would that be 21 Q And when you say "present it to 21 reflected in the minutes of the next 22 22 everyone," who is included in the meeting? 23 23 We could do it either one of two "everyone"? 24 "Everyone" would have been all of 24 ways and it depended upon the nature of the 25 25 comment. If there was a typo or something the trustees and to the director, Murray. Page 1190 Page 1191 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 like that, we would just correct it and then And it could be as simple as we started -- I 3 3 republish the minutes of the preceding see the meeting was called at 10:30, maybe 4 4 Murray would call me and say, no, the meeting. 5 5 meeting started at 10:27, so we would change O Right. 6 6 it, pretty meticulous, but I have no If it was a comment that was more 7 7 recollection. substantive in nature, what we would do is 8 8 we would -- in the minutes of the meeting Q Okay. 9 9 that we were at, we would reflect that the Are you familiar with the voting 10 10 minutes of the preceding meeting, there was requirements of the Trust Agreement of this 11 11 further discussion and either it was not Pension Fund? 12 12 stated properly or there was some other A I represent a lot of funds. I 13 13 iteration or some other comment, so it would can't tell you that I have it memorized, but 14 14 be reflected in the next meeting. I have a general sense of it. 15 15 Q Do you recall any conversations And do you know whether there is a 16 16 with respect to this October 11, 2011 quorum requirement? 17 17 minutes during the minute creation process? I believe there is. 18 18 I would say this to you. Q Do you know what it is? 19 Since October 11, 2011, I probably 19 Off the top of my head, I can't 20 20 have attended 500 meetings. tell you, it would either have been one and 21 21 So you don't remember this one? one or two and two. Q 22 This doesn't jump off page. 22 One employer trustee/one Union A 23 trustee, or two employer trustees and two 23 Q 24 24 So, you know, we typically got Union trustees. 25 25 comments because, again, that was Murray. In terms of when you attended,

	Page 1192		Page 1193
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	let's say, the Pension Fund meetings,	2	Q Okay.
3	whatever issues that arose with respect to	3	Do you know whether you did it for
4	the quorum requirement?	4	this meeting?
5	A Could you restate? You are asking	5	A I think it I'm not sure
6	whether there were	6	Q Do you want to take a minute and
7	Q Issues that arose with respect to	7	look at the minutes?
8	the quorum requirement?	8	A I'm just not remembering whether we
9	A An issue would only arise if there	9	noted that there was a quorum or I can just
10	was some question whether there was a quorum	10	see by the people who were here, this
11	or not. And I can't tell you. I'm not	11	constituted the four individuals here
12	following. Are you asking specifically at	12	constituted the full board of trustees, so
13	this meeting?	13	I'm going to assume we had a quorum based
14	Q No, no. Just generally.	14	upon just
15	A You know, I'd go around the room	15	MR. MILLER: Mr. Arbitrator,
16	before the meeting starts and I kind of make	16	objection. He's just speculating at
17	a mental check to make sure we have enough	17	this point. He has no recollection.
18	trustees to convene a meeting.	18	ARBITRATOR IRVINGS: Okay.
19	If we don't, we will state it	19	What's the question, please, exactly?
20	because then the actions we take at that	20	MR. RICHMAN: I asked if he had
21	meeting, since the meeting was not duly	21	any recollection of any quorum issue
22	constituted, raises some questions as to	22	arising out of this meeting.
23	whether we've convened a meeting.	23	MR. MILLER: Yes or no?
24	So I kind of have a mental check	24	MR. RICHMAN: He can't say yes
25	when I go around to see who is in the room.	25	or no.
	when I go dround to see who is in the room.		or no.
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1	Page 1194	1	Page 1195
1 2	ARBITRATION - VOLUME VI	1 2	ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI A Again, you are asking me to go back	2	ARBITRATION - VOLUME VI Q And if that did occur, would that
2	ARBITRATION - VOLUME VI A Again, you are asking me to go back to a particular meeting that I attended	2	ARBITRATION - VOLUME VI Q And if that did occur, would that be in the minutes?
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1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	ARBITRATOR IRVINGS: And you	2	Q Okay.
3	are saying it would refresh his	3	So is it correct to say that the
4	recollection as to whether there was	4	proxy can only be given by a trustee to
5	a proxy given or you can	5	another trustee?
6	MR. RICHMAN: Well, I wanted	6	A I'm looking
7	to look, yes, we're all lawyers	7	Q Look at C.
8	and we can argue what the Trust	8	A Okay.
9	means. But we have with us Fund	9	MR. MILLER: It says what it
10	counsel, or one of the Fund counsel.	10	· · · · · · · · · · · · · · · · · · ·
11	ARBITRATOR IRVINGS: Show him	11	Says. But I think the question here was
12	if his refreshes his recollection.	12	But I think the question here was
13		13	Mr. Schelberg was going to look at the
14	MR. RICHMAN: It's going to	14	document and see if it refreshed his
15	take two seconds, shorter than this	15	recollection, so let's ask that.
16	discussion.	16	A Okay. I can answer the question,
	BY MR. RICHMAN:		if you want.
17	Q Forty-seven in the red book.	17	Q Please.
18	Yeah, take a look at Voter Trustee	18	A The Trust Agreement provides that a
19	6.4, on Page 28, which is FUND-2304.	19	proxy can be issued to if it's an
20	A If I may, may I just read it?	20	employer trustee, to another employer
21	ARBITRATOR IRVINGS: Yes.	21	trustee; if it's a Union trustee, to another
22	Q Yeah, read it. You don't have to	22	Union trustee, as the case may be.
23	read it out loud.	23	Q And it needs to be in writing,
24	MR. MILLER: Read to yourself.	24	correct?
25	A Okay.	25	A It needs to be in writing.
	Page 1198		Page 1199
1	_	1	
1 2	ARBITRATION - VOLUME VI	1 2	ARBITRATION - VOLUME VI
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI Q Let me show you this affidavit. MR. MILLER: Objection. The whole reason that Mr. Schelberg is here today is to obviate the discussion of and submission into evidence of this affidavit. If he wants to ask him questions, let him ask questions. MR. RICHMAN: I'll ask him questions. BY MR. RICHMAN: Q So, Mr. Schelberg, the October 11, 2011 final minutes incorporated your comments, correct? A I believe so, yes. Q Okay. Do you have any recollection of Mr. Hayes and you know who Mr. Hayes is? A Yes. Q giving his vote of proxy to another trustee in connection with the October 11, 2011 meeting?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI second. So why don't we take a look at the October 11th minutes. And there are several places in the minutes. The first place, I think, if you take a look at the third page of the minutes. That's the one on the top that says "Page 3" and starts with an "H." And you see a motion made with respect to Quan-Vest? A Correct. Q Second, they unanimously adopted. And then there's a second motion with respect to Quan-Vest, right? A Right. Q And in order for those motions to be seconded and unanimously adopted, there would need to be a quorum; is that correct? A Under the terms of the Trust, yes. Q Now, let's go to Page 5 of the minutes, please. And looking at if you look in
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		1	
	Page 1200		Page 1201
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	Do you see that?	2	taken.)
3	MR. MILLER: We have a redacted	3	BY MR. RICHMAN:
4	version. And you've asked him about	4	Q In connection with the October 11,
5	a portion of the minutes that have	5	2011 Pension Fund meeting, do you have or
6	been redacted in connection with this	6	did you ever see a written proxy from any of
7	case.	7	the trustees giving their vote to another
8	MR. RICHMAN: Well, I would	8	trustee?
9	like to show the witness an	9	A No, I did not.
10	unredacted version.	10	Q Is that something you would have
11	ARBITRATOR IRVINGS: No.	11	seen?
12	MR. MILLER: No.	12	A I would think that if there was a
13	BY MR. RICHMAN:	13	proxy, I would have seen it, yes.
14	Q If there were motions made during	14	Q With respect to turn to Page 4
15	this meeting that indicate that they were	15	of the minutes, please.
16	seconded and unanimously adopted, those	16	And you see Roman Numeral VIII is
17	motions would be to meet the quorum	17	the Segal report.
18	requirement, correct?	18	Do you see that?
19	Yes.	19	A Yes.
20	Q Okay. Let's skip the redaction.	20	Q And in A, there is a reference to
21	MR. RICHMAN: I think I just	21	withdrawal liability determination for
22	need to take a minute or two.	22	El Diario.
23	ARBITRATOR IRVINGS: Okay.	23	Do you see that?
24	Great.	24	A Yes, I see that.
25	(A brief recess was	25	Q Do you recall any of that
	Page 1202		Page 1203
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	discussion?	2	of minutes.
3	A Not specifically.	3	ARBITRATOR IRVINGS: Certainly.
4	I knew El Diario was a contributing	4	(A brief recess was
5	employer, but I don't have any specific	5	taken.)
6	recollection of this.	6	CROSS EXAMINATION BY MR. MILLER:
7	Q Okay.	7	Q Mr. Schelberg, I think in
8	Did you provide any input into the	8	connection with your direct testimony, you
9	discussion with respect to what a partial	9	testified that you had no recollection of
10	withdrawal was?	10	Terry Hayes giving his vote to another
11	MR. MILLER: Objection.	11	trustee by proxy during the October 11th
12	He just testified he doesn't	12	meeting.
13	remember any.	13	Do you remember that testimony?
14	MR. RICHMAN: I'm working on	14	A Yes.
15	his memory here.	15	Q But am I correct that you have no
16	MR. MILLER: Go ahead.	16	recollection, one way or the other, as to
17	A You know, if there was a discussion	17	whether Mr. Hayes gave a proxy?
18	at the meeting, I probably participated in	18	A Correct.
19	that discussion.	19	Q Can you recall any occasion in
20	Q Well, is there any doubt that there	20	which a trustee gave his proxy to another
21	was a discussion at the meeting?	21	trustee in connection with a trustee vote on
22	A No, no, it says there was.	22	an agenda item?
23	MR. RICHMAN: I have no further	23	A May I ask a question?
24	questions.	24	Do you mean with respect to the
		ا م	
25	MR. MILLER: Give us a couple	25	driver's fund or just generally or

Page 1204 Page 1205 1 ARBITRATION - VOLUME VI 1 ARBITRATION - VOLUME VI 2 2 My question related to the NMDU Q Α Yes 3 3 Those are the minutes of the Fund. 0 4 4 Okay. October 11th. Α 5 5 I honestly cannot recall a time Α Okav. 6 6 where there was a proxy given. I just don't And why don't you turn your Q 7 7 remember it. It doesn't happen that often attention to Page 5. 8 8 and I just don't remember whether it ever Α Okav. 9 9 happened on the Fund. I just don't recall. And Item Roman X, which is entitled O 10 10 Do you recall whether there have Fund Office. 11 been occasions in which trustees of the NMDU 11 And you'll see under Item X, it 12 12 Fund arrive to meetings late or leave indicates that, "A motion was made and 13 13 meetings early? unanimously approved at this October 11th 14 14 Yes, they do. meeting to approve a 3 percent wage increase Α 15 15 to Fund office personnel." O In a circumstance in which a 16 16 trustee needs to leave a meeting early, have Do you see that? 17 17 Yes. I do. there been occasions in which the trustee Α 18 18 advises the Fund director of that fact, and Q Is this an example of the kind of 19 19 agenda item that would be of sufficient as a consequence, the sequence of 20 consideration of agenda items is changed in 20 importance to the Fund director so that if a 21 21 order to ensure that they vote on an item trustee needed to leave a meeting early, the 22 22 occurs while a quorum of trustees remain? Fund director would change the order of the 23 23 Yes agenda items to ensure that this issue was 24 24 Q Let me draw your attention back to taken up before the trustee had to leave? 25 25 Exhibit 140. MR. RICHMAN: Objection. Page 1206 Page 1207 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 ARBITRATOR IRVINGS: You're for the NMDU Fund. 3 Can you say for certain that in asking him to speculate on what was 4 connection with all votes at all trustee 4 in Mr. Schwartz's mind? 5 meetings of the NMDU funds, the quorum rules MR. MILLER: I'll withdraw the 6 6 were satisfied? question. 7 7 A I can't say that with certainty. I ARBITRATOR IRVINGS: Thank you. 8 would hope they were, but I can't say that 8 BY MR. MILLER: 9 9 Q In instances in which trustees left for certainty. 10 early, and as a consequence, the agenda 10 Q Okay. 11 items had their sequence changed in order to 11 MR. MILLER: Give us a couple 12 cast a vote while a quorum of trustees 12 of minutes. It really will be just a 13 remained present, would the minutes 13 couple of minutes to see if I have 14 necessarily have reflected that change in 14 any further questions. 15 the sequence of agenda items? 1.5 MR. RICHMAN: All right. 16 Probably not. MR. MILLER: I have no 17 17 I think you were asked a couple of additional questions. 18 questions on direct about trustee review of 18 MR. RICHMAN: I do. Just a 19 minutes of meetings. 19 couple of questions. 2.0 20 You don't know whether in the REDIRECT EXAMINATION BY MR. RICHMAN: 2.1 extent particular trustees actually reviewed 21 Q So, Mr. Schelberg, when you get the 22 any particular set of minutes, do you? 22 minutes from Mr. Urbank, right, do they go 23 23 in the order of the agenda or do they go in Α 24 There were several questions that 24 the order of the meeting? 2.5 Mr. Richman asked you about the quorum rules 25 A Murray was very meticulous and he

	Page 1208		Page 1209
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	would match up the minutes with the agenda.	2	A Well, two things: Number 1, yes.
3	So, you know, Item Number 1 on the agenda	3	And then Number 2, to ensure that
4	would be Item Number 1. Item Number 2 would	4	it's then recorded in the minutes,
5	be Number 2 and we followed all the way	5	otherwise, it would not have gotten into the
6	through.	6	minutes.
7	Q When you do if you look at X,	7	MR. RICHMAN: I have no further
8	where it says, "Poll vote, 3177," number on	8	questions.
9	the bottom.	9	MR. MILLER: No further
10	What's a "poll vote"?	10	questions.
11	A What would happen is between	11	MR. RICHMAN: All right. You
12	regularly-scheduled meetings, if there was	12	are free to go.
13	some item that needed to be considered by	13	MR. MILLER: Thank you.
14	the board, what Murray would do is, he would	14	(A brief recess was
15	call the trustees and poll them, speak to	15	taken.)
16	them and orally get their vote.	16	FURTHER CROSS EXAMINATION:
17	And then at the next	17	Q Good morning, Mr. Urbank.
18	regularly-scheduled trustees' meeting, he	18	A Good morning.
19	would state it as another agenda item and	19	Q So I'm going to divide the
20	note that the poll vote that occurred	20	questioning this morning into two parts.
21	between the regularly-scheduled meetings	21	The first, we'll just, essentially,
22	would then be presented and it would then be	22	take up where we left off in the prior
23	ratified by the trustees at that meeting.	23	cross-examination and we'll be focusing on
24	Q And that's to make sure the Trust	24	documents primarily, not exclusively, in
25	Agreement procedures were followed?	25	this white binder.
	Page 1210		Page 1211
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	And then for the second part, I'll	2	gave in connection with your direct
3	be discussing with you various documents in	3	testimony that begin on Page 451 at Line 17
4	the yellow binder and, more particularly,	4	and go down to Page 452 at Line 11.
5	minutes of trustee meetings and exhibits	5	Okay. So why don't you do that.
6	thereto.	6	A Out loud?
7	So with that as a background, let's	7	Q Please.
8	dive in and let's begin by reviewing your	8	ARBITRATOR IRVINGS: Why are we
9	prior direct testimony.	9	doing that?
10	And I believe that you have a	10	MR. MILLER: It's foundational.
11	transcript of your prior direct testimony in	11	I'm then going to ask him about that
12	front of you.	12	testimony. It's cross-examination.
13	MR. RICHMAN: Why are we doing	13	ARBITRATOR IRVINGS: Well, I
14	this?	14	don't mind you asking him about his
15	MR. MILLER: It's	15	testimony. I have a philosophical
16	cross-examination.	16 17	issue about people reading aloud.
17 18	ARBITRATOR IRVINGS: Go ahead.	18	MR. MILLER: Okay. That's,
19	BY MR. MILLER:	19	essentially, for your convenience
20	Q So I would like to draw your	20	because you don't have the document.
21	attention to Page 451 of the transcript.	21	I'll give it to you.
22	Are you there? A Yes.	22	Q Okay. Go ahead, why don't you just read it.
		23	
2.3	O Good		
23 24	Q Good. And what I would like you to do is		A From 17 to where?
	Q Good. And what I would like you to do is to read the questions and answers that you	24 25	Q From 17 to where? Q From 17 to Line 11 on 452. A Okay.

Page 1212 Page 1213 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 0 Okay. something. 3 3 So is it still your testimony that I don't understand the 4 the basis for your view that CBU's shifts is 4 hypothetical. Why he's being asked 5 5 that you were advised by the Fund office hypothetical questions. 6 6 that that's how the Fund was receiving its MR. MILLER: Well, first, 7 7 there's been testimony in the record contributions from contributing employers? 8 8 Α that some of or at least one of the 9 9 O So just to clarify, the basis for contributing employers here, in fact, 10 10 your view that CBU's shifts is that the Fund compensates its employees not based 11 11 received its contributions from the on shifts, but based on salary. 12 12 employers on the basis of shifts, correct? And so relying upon that, I want to 13 13 ask questions that go to the Α Yes 14 14 reasonableness and the legitimacy of the 0 What if a contributor to the Fund 15 15 compensates its employees based not on position that shifts are CBUs, which is 16 16 shifts, but on a different method? at the heart of the matter here. 17 17 For example, what if an employer MR. RICHMAN: And we're also 18 18 that contributes to the Fund compensates its missing a foundation question about 19 19 employees based on salary? In such a case, whether he does this. 20 20 how would you compute whether that MR. MILLER: I'm sorry, I used 21 21 contributor has 70 percent decline for the wrong verb. 22 22 partial withdrawal purposes? As you know, there's been some 23 23 MR. RICHMAN: Objection. testimony that employers compensate their 2.4 24 He's a fact witness. He's not employees based on salary. They receive 25 25 providing opinion about how to do a salary. And that they then contribute Page 1214 Page 1215 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 to the Fund based on salary. I didn't review the actual calculation, the 3 ARBITRATOR IRVINGS: Okay. mathematical determinations. 4 4 But there was a foundation Would you present the calculation 5 5 objection raised, which is legitimate. findings to the Fund? 6 6 So do you want to deal with the Yes. A 7 7 foundation as to whether he does the So, therefore, you have familiarity 8 8 with the general rules in which withdrawal calculations? 9 9 MR. MILLER: Okay. liability calculations are made, correct? 10 10 MR. RICHMAN: Objection. BY MR. MILLER: 11 And the issue of "you present." 11 Q Do you perform withdrawal liability 12 12 MR. MILLER: Well, he answered calculations in connection with your work or 13 13 did you perform withdrawal liability the question. 14 14 calculations in connection with your work MR. RICHMAN: Well, the problem 15 1.5 for the Pension Fund? is the "you." 16 Who is the "you" in this? 16 Α 17 17 And he also didn't testify with Those calculations were performed 18 18 by your colleague, Ms. Egan, correct? regard -- to make the jump of the 19 19 If requested. familiarity. 20 20 If requested. If you want to ask him base 0 21 21 And -- but it was your pattern and questions about how familiar he is with, 22 22 practice to review those calculations and you can ask that, although I'm going to 23 23 object on the ground that if he didn't present those calculations to the client. 24 24 the Fund, correct? perform the calculations, why are we 25 asking with respect to this fund, he 25 A I reviewed the correspondence, too.

	Page 1216		Page 1217
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	shouldn't be asked questions about.	2	partial withdrawal?
3	ARBITRATOR IRVINGS: Taking it	3	A I understand, yes.
4	one at a time.	4	Q And you have been present at NMDU
5	I interpreted "you" as him	5	Fund meetings in which your colleagues
6	personally, not the royal "you."	6	discussed withdrawal liability calculations
7	MR. MILLER: And that's the	7	that they made at the request of the Fund,
8	intent of the question.	8	correct?
9	ARBITRATOR IRVINGS: Okay. So	9	A Yes.
10	let's start with that.	10	MR. MILLER: So,
11	Just to clarify, did you personally	11	Mr. Arbitrator, I think that he has a
12	present calculations to the Fund to the	12	sufficient background to be asked his
13	trustees?	13	view on how the fact that one of the
14	THE WITNESS: No.	14	employers both compensated and made
15	ARBITRATOR IRVINGS: You did	15	contributions to the Fund based on
16	not?	16	salary comports with his position
17	THE WITNESS: Presented the	17	about what constitutes contribution
18	correspondence to them. I don't	18	base units.
19	recall actually presenting a partial	19	MR. RICHMAN: Which employer
20	withdrawal liability calculation to	20	are you speaking about?
21	the trustees personally.	21	MR. MILLER: The Union. There
22	BY MR. MILLER:	22	was testimony about that. Union
23	Q Nonetheless, are you generally	2.3	employees.
24	familiar with the rules that govern	24	MR. RICHMAN: Is the Union
25	calculation of complete withdrawal and	25	subject to the Collective Bargaining
	Page 1218		Page 1219
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	Agreement?	2	data that allowed the Segal team to prepare
3	MR. MILLER: The point is that	3	the calculation, correct?
4	there's been testimony that the Union	4	A Yes.
5	compensates its own employees on a	5	Q And typically, you would ask for
6	salaried basis and makes	6	that information in the form of a written
7	contributions on a salaried basis.	7	letter, correct?
8	I would like to ask this witness	8	A Yes.
9	how that fact squares with his	9	Q Draw your attention to the white
10	assumption.	10	book.
11	ARBITRATOR IRVINGS: You can	11	Why don't you take a look at
12	ask him about factual questions.	12	Exhibit 15.
13	He's not here as an expert.	13	MR. RICHMAN: Exhibit?
14	MR. MILLER: Okay.	14	MR. MILLER: 15.
15	BY MR. MILLER:	15	BY MR. MILLER:
16	Q So it is the case that during the	16	Q So you'll see that Exhibit 15 is a
17	course of the engagement that Segal had with	17	letter dated March 11, 2009 from you to
18	this fund, that Segal did calculate	18	Mr. Schwartz in connection with a request
19	withdrawal liability both for withdrawing	19 20	for a calculation of withdrawal liability.
20	employers and in connection with requests	20	Do you see that?
21 22	for estimates, right?	22	A Yes.
23	A Yes.	23	Q Did you write this letter?
23	Q And in connection with those	24	A Yes.
25	efforts, you would routinely ask Mr. Schwartz and the Fund office for certain	25	Q And did you, in fact, request this data?
	ivit. Schwartz and the Fund office for certain		uaia!

	Page 1220		Page 1221
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	A Yes.	2	MR. RICHMAN: Okay. I just
3	Q And you'll note in the second	3	want to note for the record that
4	paragraph under 2, there's a reference to	4	specific question was asked before.
5	hours. It says, "Shifts/hours"?	5	ARBITRATOR IRVINGS: Do you
6	A Uh-huh.	6	want to reask it?
7	Q Was information about hours	7	THE WITNESS: Thank you.
8	relevant to calculation of NMDU Fund	8	BY MR. MILLER:
9	withdrawal liability?	9	Q Was information about hours
10	MR. RICHMAN: Mr. Arbitrator, I	10	relevant to calculation of NMDU Fund
11		11	withdrawal liability?
12	object to this line of questioning.	12	
13	This is documents that not only did	13	A There is, in the Plan document,
14	The New York Times have, but they all	14	reference to hours for purposes of pension
	asked these questions before on	15	credit for non-work events, such as
15 16	cross-examination.	16	vacation.
	MR. MILLER: The prior	17	So my belief is that the reason
17	cross-examination was aborted on		it's stated shifts and hours is because of
18	finishing, as I indicated, right at	18	that.
19	the outset. I'm finishing that	19	Q So in connection with this
20	cross-examination and then I'm going	20	March 11, 2009 request for data from the
21	to move on to the supplemental	21	Fund, did the Fund ever respond to you?
22	documents.	22	A I don't know a hundred percent
23	And, frankly, I don't have much	23	certainty, but I would assume that they
24	more on cross.	24	would have
25	ARBITRATOR IRVINGS: Go ahead.	25	MR. RICHMAN: Objection.
	Page 1222		Page 1223
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2		_	ARDITRATION - VOLUME VI
_	You either know or you don't.	2	that's referred to in connection with this
3	You either know or you don't. A I don't know for certain that they		that's referred to in connection with this
	A I don't know for certain that they	2	that's referred to in connection with this letter strike that. Let me ask it a
3	A I don't know for certain that they did.	2 3	that's referred to in connection with this letter strike that. Let me ask it a better way.
3 4	A I don't know for certain that they did. Q Do you recall if Segal ever	2 3 4	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe
3 4 5	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate	2 3 4 5	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter
3 4 5 6	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this	2 3 4 5	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have
3 4 5 6 7	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter?	2 3 4 5 6 7	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this
3 4 5 6 7 8	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No.	2 3 4 5 6 7 8	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case?
3 4 5 6 7 8	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall?	2 3 4 5 6 7 8	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No.
3 4 5 6 7 8 9	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall? A I don't recall if we specifically	2 3 4 5 6 7 8 9	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No. Q Now I want to draw your attention
3 4 5 6 7 8 9 10	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall? A I don't recall if we specifically did it for this request.	2 3 4 5 6 7 8 9 10	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No. Q Now I want to draw your attention to the yellow binder in Exhibit 135.
3 4 5 6 7 8 9 10 11	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall? A I don't recall if we specifically did it for this request. Q Okay.	2 3 4 5 6 7 8 9 10 11 12	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No. Q Now I want to draw your attention to the yellow binder in Exhibit 135. Exhibit 135 are minutes of a
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3 4 5 6 7 8 9 10 11 12 13 14 15	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall? A I don't recall if we specifically did it for this request. Q Okay. If the calculation had, in fact, been prepared, would the calculation itself and the worksheets relating to that	2 3 4 5 6 7 8 9 10 11 12 13 14 15	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No. Q Now I want to draw your attention to the yellow binder in Exhibit 135. Exhibit 135 are minutes of a September 24, 2010 trustees meeting. And if you draw your attention to, I think, it's Page 5 of the minutes, it's at
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3 4 5 6 7 8 9 10 11 12 13 14 15 16	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall? A I don't recall if we specifically did it for this request. Q Okay. If the calculation had, in fact, been prepared, would the calculation itself and the worksheets relating to that calculation be in Segal's files? A Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No. Q Now I want to draw your attention to the yellow binder in Exhibit 135. Exhibit 135 are minutes of a September 24, 2010 trustees meeting. And if you draw your attention to, I think, it's Page 5 of the minutes, it's at FUND-03147. Roman numeral heading XI. Do you see that there, New York
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall? A I don't recall if we specifically did it for this request. Q Okay. If the calculation had, in fact, been prepared, would the calculation itself and the worksheets relating to that calculation be in Segal's files? A Yes. Q And you are aware that there was a request for documents made to Segal encompassing estimates prepared for The New York Times, correct? A Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No. Q Now I want to draw your attention to the yellow binder in Exhibit 135. Exhibit 135 are minutes of a September 24, 2010 trustees meeting. And if you draw your attention to, I think, it's Page 5 of the minutes, it's at FUND-03147. Roman numeral heading XI. Do you see that there, New York Times? A Yes. Q And it makes reference to an Exhibit L, which is a Proskauer Rose letter regarding New York Times request for
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A I don't know for certain that they did. Q Do you recall if Segal ever performed the withdrawal liability estimate calculation that's referred to in this letter? A No. Q No, you don't recall? A I don't recall if we specifically did it for this request. Q Okay. If the calculation had, in fact, been prepared, would the calculation itself and the worksheets relating to that calculation be in Segal's files? A Yes. Q And you are aware that there was a request for documents made to Segal encompassing estimates prepared for The New York Times, correct? A Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	that's referred to in connection with this letter strike that. Let me ask it a better way. Do you have any reason to believe that if the work relating to this letter were in Segal's files, it would not have been produced to The New York Times in this case? A No. Q Now I want to draw your attention to the yellow binder in Exhibit 135. Exhibit 135 are minutes of a September 24, 2010 trustees meeting. And if you draw your attention to, I think, it's Page 5 of the minutes, it's at FUND-03147. Roman numeral heading XI. Do you see that there, New York Times? A Yes. Q And it makes reference to an Exhibit L, which is a Proskauer Rose letter regarding New York Times request for

	Page 1224		Page 1225
1	ARBITRATION - VOLUME VI	1 ΔRRITR	ATION - VOLUME VI
2	A Yes.	² Q Okay.	ATTION - VOLUME VI
3	Q And why don't you turn a couple of		employer made a request
4	pages thereafter to FUND-03363.		te of withdrawal liability, the
5	And you'll see that there is an		charge the employer for a cost
6	August and that is an August 4, 2010		e preparation of such
7	letter from Stephen Mogila of Proskauer Rose	estimate, con	
8	to Murray Schwartz.	8 A Correct	
9	Do you see that letter?		s set forth in this letter in
10	A Yes.	~	rith a withdrawal liability
11	Q Why don't you take a moment to read		The New York Times requested,
12	the body of that letter to yourself.		eurn, sought a \$1,000 fee from
13	A I've read it.		cover its costs for preparing
14	Q Okay.	that estimate,	
15	So I take it that in connection		CHMAN: Objection.
16	with preparation of withdrawal liability		tta start with has he seen
17	estimates that Segal would make relating to	the letter be	
18	this Pension Fund, Segal would charge for	18 MR. M	ILLER: I was asking
19	that service, correct?		uestions. If you would
20	A The Fund would.	20 like	3
21	Q Segal would charge the Fund?	MR. RI	CHMAN: No, no. You were
22	A The Fund would charge.	referencing	the letter.
23	Q The Fund would charge		re going to reference the
24	A Charge the employer for the	letter and a	sk questions about the
25	calculation.	letter, you g	gotta ask if he's ever seen
	Page 1226		Page 1227
1	ARBITRATION - VOLUME VI		A THOM I MOUNT OF THE
_		1 ARRITR	ZATION - VOLUME VI
2			AATION - VOLUME VI the letter that check is being
2 3	the letter.	² indicated on	the letter, that check is being
	the letter. MR. MILLER: I have no problem	indicated onprovided to t	the letter, that check is being he Fund on behalf of The Times.
3	the letter. MR. MILLER: I have no problem with that.	indicated onprovided to t	the letter, that check is being
3 4	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter	 indicated on provided to to 1 Do you 5 A Yes. 	the letter, that check is being he Fund on behalf of The Times. see that?
3 4 5	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter before?	 indicated on provided to f. Do you A Yes. Q All rig 	the letter, that check is being he Fund on behalf of The Times. see that?
3 4 5 6	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter	 indicated on provided to the provided	the letter, that check is being he Fund on behalf of The Times. see that? the letter, that check is being he Fund on behalf of The Times. see that?
3 4 5 6 7	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter before? A It's part of the minutes. I would have saw it.	indicated on provided to to to 2 provided to to 4 provided to to 5 provided to 5 provide	the letter, that check is being he Fund on behalf of The Times. see that? tht. ter goes on to say that had reached out to you,
3 4 5 6 7 8	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter before? A It's part of the minutes. I would have saw it.	indicated on provided to to to 2 provided to to 4 provided to to 5 provided to 5 provide	the letter, that check is being he Fund on behalf of The Times. see that? the letter, that check is being he Fund on behalf of The Times. see that?
3 4 5 6 7 8 9	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter before? A It's part of the minutes. I would have saw it. Q And you testified that you	indicated on provided to to to 2 provided to to 4 provided to to 5 provided to 5 provide	the letter, that check is being he Fund on behalf of The Times. see that? ght. ter goes on to say that had reached out to you, and had instructed you to hdrawal liability estimate for
3 4 5 6 7 8 9	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter before? A It's part of the minutes. I would have saw it. Q And you testified that you understood that the Fund did charge	indicated on provided to to to 2 provided to to 5 provided t	the letter, that check is being he Fund on behalf of The Times. see that? ght. ter goes on to say that had reached out to you, and had instructed you to hdrawal liability estimate for
3 4 5 6 7 8 9 10 11 12 13	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter before? A It's part of the minutes. I would have saw it. Q And you testified that you understood that the Fund did charge employers a fee when those employers	indicated on provided to to to to you you you you you you you you you yo	the letter, that check is being he Fund on behalf of The Times. see that? ght. ter goes on to say that had reached out to you, and had instructed you to hdrawal liability estimate for rk Times.
3 4 5 6 7 8 9 10 11 12 13 14	the letter. MR. MILLER: I have no problem with that. Q Have you ever seen this letter before? A It's part of the minutes. I would have saw it. Q And you testified that you understood that the Fund did charge employers a fee when those employers requested a withdrawal liability calculation, correct? A Yes.	indicated on provided to	the letter, that check is being he Fund on behalf of The Times. see that? ght. ter goes on to say that had reached out to you, and had instructed you to hdrawal liability estimate for rk Times.
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	Page 1228		Page 1229
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	Q If Segal had prepared an estimate	2	from you and your colleague, Ms. Egan, to
3	in 2010, would that be in Segal's files?	3	Murray Schwartz and it provides Mr. Schwartz
4	A Yes.	4	with a partial withdrawal liability
5	Q Do you have any reason to believe	5	calculation for The New York Times, correct?
6	that if the work had been performed and was	6	A Yes.
7	contained in Segal's files, it would not	7	Q Did you prepare this memo or have a
8	have been produced in The New York Times in	8	hand in its preparation?
9	this case?	9	A I prepared it with Ms. Egan.
10	A It would have been produced to the	10	Q Did you discuss the withdrawal
11	Fund.	11	liability results that are contained on
12	Q Do you know if The New York Times	12	Page 2 of this memorandum with Mr. Schwartz?
13	ever received an estimate of withdrawal	13	A I don't recall.
14	liability based on the request and payment	14	Q And you'll note that on Page 2 of
15	that is referred to in this August 4, 2010	15	this memorandum, it provides a calculation
16	letter?	16	both for a partial withdrawal and a complete
17	A No.	17	withdrawal amount.
18	Q Now I need you to go back to the	18	Do you see that in the second
19	white book. And why don't you open up	19	paragraph on Page 2?
20	Exhibit 17.	20	A Yes.
21		21	Q And let me draw your attention back
22	And why don't you take a moment and	22	
23	familiarize yourself with this document.	23	to the first paragraph of this memorandum.
24	Ready? A Yes.	24	And why don't you read the second
25		25	sentence, the sentence that begins, "This
23	Q So this document is a memorandum		partial withdrawal calculation reflects"
	Page 1230		Page 1231
1	Page 1230 ARBITRATION - VOLUME VI	1	Page 1231 ARBITRATION - VOLUME VI
1 2	_	1 2	
	ARBITRATION - VOLUME VI		ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI A "This partial withdrawal	2	ARBITRATION - VOLUME VI A The Fund would have requested it.
2	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a	2 3	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the
2 3 4	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a partial cessation of the employers' obligation to contribute to the plan as of January 2009 at City and Suburban."	2 3 4 5 6	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the Fund's request was as a consequence of a
2 3 4 5	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a partial cessation of the employers' obligation to contribute to the plan as of	2 3 4 5	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the Fund's request was as a consequence of a request by The New York Times for an
2 3 4 5 6	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a partial cessation of the employers' obligation to contribute to the plan as of January 2009 at City and Suburban."	2 3 4 5 6	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the Fund's request was as a consequence of a request by The New York Times for an estimate?
2 3 4 5 6 7	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a partial cessation of the employers' obligation to contribute to the plan as of January 2009 at City and Suburban." MR. RICHMAN: You can always	2 3 4 5 6 7	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the Fund's request was as a consequence of a request by The New York Times for an estimate? A No.
2 3 4 5 6 7 8	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a partial cessation of the employers' obligation to contribute to the plan as of January 2009 at City and Suburban." MR. RICHMAN: You can always read to yourself.	2 3 4 5 6 7 8	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the Fund's request was as a consequence of a request by The New York Times for an estimate? A No. Q You don't know one way or the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a partial cessation of the employers' obligation to contribute to the plan as of January 2009 at City and Suburban." MR. RICHMAN: You can always read to yourself. MR. MILLER: You can. THE WITNESS: I was doing it for the stenographer. MR. RICHMAN: No, you don't have to. Q The calculation that's contained or calculations that are contained in this memorandum, these calculations were not performed in response to a withdrawal liability estimate from The New York Times, correct? A I don't recall.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the Fund's request was as a consequence of a request by The New York Times for an estimate? A No. Q You don't know one way or the other? A No. Q And drawing attention, again, to the second sentence in the first paragraph which refers to City and Suburban. Are you aware whether the partial withdrawal liability calculation that was requested by the Fund was in connection with a potential 70 percent partial withdrawal or another form of partial withdrawal? A I don't recall.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME VI A "This partial withdrawal calculation reflects that there was a partial cessation of the employers' obligation to contribute to the plan as of January 2009 at City and Suburban." MR. RICHMAN: You can always read to yourself. MR. MILLER: You can. THE WITNESS: I was doing it for the stenographer. MR. RICHMAN: No, you don't have to. Q The calculation that's contained or calculations that are contained in this memorandum, these calculations were not performed in response to a withdrawal liability estimate from The New York Times, correct? A I don't recall. Q So you don't know one way or the other whether the Fund directed you to make these calculations or they were in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	ARBITRATION - VOLUME VI A The Fund would have requested it. Q But you don't know whether the Fund's request was as a consequence of a request by The New York Times for an estimate? A No. Q You don't know one way or the other? A No. Q And drawing attention, again, to the second sentence in the first paragraph which refers to City and Suburban. Are you aware whether the partial withdrawal liability calculation that was requested by the Fund was in connection with a potential 70 percent partial withdrawal or another form of partial withdrawal? A I don't recall. Q All right. Let's move from that document to Exhibit 4 in the same binder. And Exhibit 4 should be an
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	Page 1232		Page 1233
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	get into questions on Exhibit 4, which is	2	York Times is requesting an estimate of
3	an August 15, 2011 letter, I want to,	3	withdrawal liability as if a complete
4	again, point out to you the date of the	4	withdrawal had occurred during the most
5	letter that we just went over, the letter	5	recent Plan year.
6	which is in Exhibit 17.	6	And in Paragraph 2, it essentially
7	So take a look first at Exhibit 17	7	asked for backup worksheets in connection
8	again and please make note of the date of	8	with that complete withdrawal liability
9	that memo, July 19, 2011.	9	calculation request.
10	Do you see that?	10	Do you see that?
11	A Yes.	11	A Yes.
12	Q Okay.	12	Q Have you ever seen this letter
13	And now let's turn to Exhibit 4,	13	before?
14	which is, as you'll see, an August 15, 2011	14	A I don't recall.
15	letter.	15	Q Did you ever receive a call from
16	So this letter in Exhibit 4 is	16	Fund counsel or anyone else from the Fund in
17	dated less than 30 days after the Segal	17	the summer of 2011 about preparing a
18	Company had provided its calculation of The	18	response to a request from The New York
19	New York Times partial and complete	19	Times for withdrawal liability?
20	withdrawal liability, correct?	20	A I don't recall.
21	A Yes.	21	Q Now given that this letter came in
22	Q Why don't you take a moment to	22	less than 30 days after Segal had prepared
23	familiarize yourself with the letter.	23	and provided to the Fund a withdrawal
24	So you'll note that in Paragraph 1	24	liability calculation relating to The New
25	of this letter, it indicates that The New	25	York Times, isn't it the case that at the
			,
	Page 1234		Page 1235
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	time the Fund received this request, it	2	that Segal performed and which is discussed
3	already had in its possession the	3	in the July 19, 2011 letter that we just
4	calculation that Segal had done the prior	4	went over, I assume that there would have
5			
	month correct?	5	
6	month, correct?	5 6	been backup worksheets in connection with
6 7	A I think so.		been backup worksheets in connection with that undertaking?
	A I think so.Q Did you ever advise the Fund in the		been backup worksheets in connection with that undertaking? MR. RICHMAN: I want to make a
7	A I think so. Q Did you ever advise the Fund in the summer of 2011 that it already had in its	6 7	been backup worksheets in connection with that undertaking? MR. RICHMAN: I want to make a general objection here and I raised
7 8	A I think so. Q Did you ever advise the Fund in the summer of 2011 that it already had in its possession the calculation that had been	6 7 8	been backup worksheets in connection with that undertaking? MR. RICHMAN: I want to make a general objection here and I raised it before and we've now come back to
7 8 9	A I think so. Q Did you ever advise the Fund in the summer of 2011 that it already had in its possession the calculation that had been undertaken and we discussed in Exhibit 17?	6 7 8 9	been backup worksheets in connection with that undertaking? MR. RICHMAN: I want to make a general objection here and I raised it before and we've now come back to it.
7 8 9 10	A I think so. Q Did you ever advise the Fund in the summer of 2011 that it already had in its possession the calculation that had been undertaken and we discussed in Exhibit 17? A No.	6 7 8 9	been backup worksheets in connection with that undertaking? MR. RICHMAN: I want to make a general objection here and I raised it before and we've now come back to it. These documents were all available
7 8 9 10 11	A I think so. Q Did you ever advise the Fund in the summer of 2011 that it already had in its possession the calculation that had been undertaken and we discussed in Exhibit 17? A No. Q Do you know if Ms. Egan did?	6 7 8 9 10 11	been backup worksheets in connection with that undertaking? MR. RICHMAN: I want to make a general objection here and I raised it before and we've now come back to it. These documents were all available for cross of this witness. There is no
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	Page 1236		Page 1237
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	July calculation that we previously	2	August 15, 2011?
3	discussed, Segal would, in its normal	3	A No.
4	course, maintain the backup worksheets for	4	Q Now I want to focus my questions on
5	such a calculation, correct?	5	the documents that's contained in the yellow
6	A Yes.	6	set.
7	Q Okay.	7	But before I do, I want to get into
8	And those backup worksheets for the	8	some foundational questions that will help,
9 10	July 2011 calculation would have been in	9	hopefully, move the examination along.
11	Segal's possession as of August 15, 2011,	11	Let me know when you are ready.
12	correct?	12	A Ready.
13	A Yes.	13	Q So you were the client relationship
14	Q And do you know of any reason why	14	manager for Segal in connection with the
15	those backup worksheets could not have been	15	NMDU Fund engagement, correct? A Yes.
16	promptly provided to the Fund in connection with this August 15, 2011 request?	16	
17	with this August 15, 2011 request? A No.	17	Q And you attended all the trustee meetings during the term of Segal's
18	Q Do you know whether the backup	18	engagement by the Fund, correct?
19	worksheets for the July calculation were	19	A I believe so.
20	ever provided to the Fund?	20	Q And among your responsibilities as
21	A No, we don't provide backup	21	client relationship manager was to take
22	worksheets.	22	notes at meetings of the trustees and
23	Q Do you know if the Fund ever	23	prepare the initial draft of the trustee
24	responded to the letter from James Dexter of	24	minutes, correct?
25	Dexter Hofing to Stephen Mogila dated	25	A Yes.
	Page 1238		Page 1239
1	-	1	
1 2	ARBITRATION - VOLUME VI	1 2	ARBITRATION - VOLUME VI
	ARBITRATION - VOLUME VI Q And am I correct that once you		ARBITRATION - VOLUME VI A Yes.
2	ARBITRATION - VOLUME VI	2	ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI Q And am I correct that once you prepared the initial draft, you would then send that draft to the Fund administrator	2 3	ARBITRATION - VOLUME VI A Yes. Q And you, in turn, would then disseminate the minutes to trustees as
2 3 4	ARBITRATION - VOLUME VI Q And am I correct that once you prepared the initial draft, you would then	2 3 4	ARBITRATION - VOLUME VI A Yes. Q And you, in turn, would then disseminate the minutes to trustees as approved by the Fund administrator and
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	Page 1240		Page 1241
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	those minutes were more widely disseminated	2	draft of the minutes of that meeting?
3	to trustees and Fund staff, correct?	3	A No.
4	A Yes.	4	Q All right. Let's take a look at
5	Q All right. Let's take a look at	5	
6		6	Page 4 I'm sorry, Page 5 of the minutes.
7	some particular documents.	7	And on Page 5, you see a couple of
8	Why don't you draw your attention	8	bullet points and they're kind of wedged
	to Exhibit 126. It's a document that		between some redacted material.
9	contains the minutes of a trustee meeting of	9	Do you see that?
10	September 20, 2007.	10	A Yes.
11	Ready?	11	Q Okay.
12	A Oh, yes.	12	So on Page 5, it indicates near the
13	Q So drawing your attention to the	13	top that there was some discussion relating
14	first page of the minutes where it indicates	14	to diversion and the Union trustees excuse
15	who was present, it indicates that you were	15	themselves to caucus and upon their return,
16	present at this meeting.	16	they made a proposal which is set forth in
17	Do you see that?	17	the two bullet points in the middle of the
18	A Yes.	18	page.
19	Q Okay.	19	Do you see that?
20	Do you have any reason to believe	20	A Yes.
21	you did not attend the September 20, 2007	21	Q I want to draw your attention to
22	meeting of the NMDU Fund trustee?	22	that third bullet, the one that begins, "If
23	A No.	23	the sixers contribution is not
24	Q And do you have any reason to	24	implemented"
25	believe that you did not prepare the initial	25	Do you see that?
	believe that you did not prepare the initial		Do you see that!
	Page 12/12		Page 12/13
	Page 1242		Page 1243
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI A Yes.	2	ARBITRATION - VOLUME VI It's Exhibit F, which begins at
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI A Yes. Q You'll note that in this bullet, it specifically states that in connection with the Welfare Fund, employees make shift contributions. Do you see that? A Yes. Q And it refers to a possible increase in shift contributions? A Yes. Q Do you know why that specific language referring to shift-based contributions was used in denoting how contributions to the Welfare Fund are made? A It's because how they were done. Q Why don't you turn your attention to Exhibit 134. And 134 contains the minutes of a May 19, 2010 board meeting of the NMDU Fund. And I think I'm going to skip for the moment questioning you about the minutes themselves and, instead, ask you to turn	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI It's Exhibit F, which begins at 03356. A Yes. Q Before I dive in, let me just ask a quick foundational question or two. The minutes from this May 19th meeting indicates that you were present, if you take a quick look at the first page. Do you have any reason to believe you were not present at this meeting? A No. Q Okay. Back to Exhibit F. Exhibit F is a memo from you and Ms. Egan to the board of trustees and it addresses the issue of information requests for 2010 zone certification. Do you see that? A Yes. Q And am I correct that one of the elements of the Pension Protection Act of 2006 in connection with multi-employer pension plans was to require that the

	Page 1244	Page 1245
1	ARBITRATION - VOLUME VI	1 ARBITRATION - VOLUME VI
2	plan would be in, correct?	Do you see that?
3	A Yes.	3 A Yes.
4	Q Okay.	Q At the bottom of that paragraph in
5	So this letter is essentially an	the last sentence, you and Ms. Egan indicate
6	information request to the board of trustees	to the trustees that you are going to need
7	so that Segal can consistent with the	an assumption, it says "for three items."
8	statutory requirements, could prepare the	8 Do you see that?
9	2010 zone certification for this fund,	9 A Yes.
10	correct?	Q And the third and last of those
11	A Yes.	items is information on expected wage
12	Q And I noticed that your name is	increases in future years.
13	first in the memo, it's not alphabetical.	Do you see that?
14	Does that mean that you wrote this	14 A Yes.
15	memo?	Q And the remainder of that sentence,
16	A No. It had no bearing.	it explains why you need information from
17	Q Okay. But did you write this memo?	the trustees about expected wage increases,
18	A I prepared this memo with Ms. Egan.	18 correct?
19	Q So it's fair to say that you and	19 A Yes.
20	Ms. Egan jointly drafted this?	Q And, indeed, it says and explains
21	A Yes.	that the reason you need information on
22	Q Let me draw your attention to	expected wage increases is because
23	Page 2 of the memo under that heading	contributions are a percentage of wages,
24	Number 4, which is Projected Industry	correct?
25	Activity.	A Yes.
	Page 1246	Page 1247
1	Page 1246 ARBITRATION - VOLUME VI	
1 2	_	1 ARBITRATION - VOLUME VI
	ARBITRATION - VOLUME VI	ARBITRATION - VOLUME VI describing contributions as a percentage of
2	ARBITRATION - VOLUME VI Q Did you discuss this memo with the	ARBITRATION - VOLUME VI describing contributions as a percentage of wages, correct?
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2 3 4 5	ARBITRATION - VOLUME VI Q Did you discuss this memo with the trustees at the May 19, 2010 board meeting? A Yes. Q And do you have any reason to believe that in the meeting, you used language in describing the contribution formula for the NMDU Fund that is different	ARBITRATION - VOLUME VI describing contributions as a percentage of wages, correct? A I don't recall without seeing each letter. Q Okay. Well, let me see if I can
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2 3 4 5 6 7 8 9 10	ARBITRATION - VOLUME VI Q Did you discuss this memo with the trustees at the May 19, 2010 board meeting? A Yes. Q And do you have any reason to believe that in the meeting, you used language in describing the contribution formula for the NMDU Fund that is different from the language that's contained in this last sentence in Paragraph Number 4? A I don't recall if we went into that	ARBITRATION - VOLUME VI describing contributions as a percentage of wages, correct? A I don't recall without seeing each letter. Q Okay. Well, let me see if I can help you. Why don't you turn to Exhibit 144 and this form letter is contained at FUND-03434. And you'll see on Page 2 there's
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI Q Did you discuss this memo with the trustees at the May 19, 2010 board meeting? A Yes. Q And do you have any reason to believe that in the meeting, you used language in describing the contribution formula for the NMDU Fund that is different from the language that's contained in this last sentence in Paragraph Number 4? A I don't recall if we went into that great of detail. Q Now, this letter requesting annual strike that. This letter requesting information for an annual certification, this was, in fact, a form letter that you and Ms. Egan, indeed, sent to the trustees annually, correct? A Yes, it's a letter that was sent annually. Q Okay. And am I correct that in each year	ARBITRATION - VOLUME VI describing contributions as a percentage of wages, correct? A I don't recall without seeing each letter. Q Okay. Well, let me see if I can help you. Why don't you turn to Exhibit 144 and this form letter is contained at FUND-03434. And you'll see on Page 2 there's that same Paragraph 4 about Projected Industry Activity. Do you see that? A Yes. Q And this 2013 version of the letter uses these same terminology in connection with describing the contribution formula to the Pension Fund, correct? A Yes. Q And if you quickly turn your attention to Exhibit 150, you'll see that at the back of that exhibit is the form of this
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	ARBITRATION - VOLUME VI Q Did you discuss this memo with the trustees at the May 19, 2010 board meeting? A Yes. Q And do you have any reason to believe that in the meeting, you used language in describing the contribution formula for the NMDU Fund that is different from the language that's contained in this last sentence in Paragraph Number 4? A I don't recall if we went into that great of detail. Q Now, this letter requesting annual strike that. This letter requesting information for an annual certification, this was, in fact, a form letter that you and Ms. Egan, indeed, sent to the trustees annually, correct? A Yes, it's a letter that was sent annually. Q Okay. And am I correct that in each year in which you sent the trustees this memo,	ARBITRATION - VOLUME VI describing contributions as a percentage of wages, correct? A I don't recall without seeing each letter. Q Okay. Well, let me see if I can help you. Why don't you turn to Exhibit 144 and this form letter is contained at FUND-03434. And you'll see on Page 2 there's that same Paragraph 4 about Projected Industry Activity. Do you see that? A Yes. Q And this 2013 version of the letter uses these same terminology in connection with describing the contribution formula to the Pension Fund, correct? A Yes. Q And if you quickly turn your attention to Exhibit 150, you'll see that at the back of that exhibit is the form of this letter for 2014 and just take a quick look
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI Q Did you discuss this memo with the trustees at the May 19, 2010 board meeting? A Yes. Q And do you have any reason to believe that in the meeting, you used language in describing the contribution formula for the NMDU Fund that is different from the language that's contained in this last sentence in Paragraph Number 4? A I don't recall if we went into that great of detail. Q Now, this letter requesting annual strike that. This letter requesting information for an annual certification, this was, in fact, a form letter that you and Ms. Egan, indeed, sent to the trustees annually, correct? A Yes, it's a letter that was sent annually. Q Okay. And am I correct that in each year	ARBITRATION - VOLUME VI describing contributions as a percentage of wages, correct? A I don't recall without seeing each letter. Q Okay. Well, let me see if I can help you. Why don't you turn to Exhibit 144 and this form letter is contained at FUND-03434. And you'll see on Page 2 there's that same Paragraph 4 about Projected Industry Activity. Do you see that? A Yes. Q And this 2013 version of the letter uses these same terminology in connection with describing the contribution formula to the Pension Fund, correct? A Yes. Q And if you quickly turn your attention to Exhibit 150, you'll see that at the back of that exhibit is the form of this

	Page 1248		Page 1249
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	2014 version also contains this same	2	Any reason to believe you did not
3	terminology in characterizing the	3	attend?
4	contribution formula?	4	A No.
5	A Yes.	5	Q Any reason to believe that you did
6	Q It does, correct?	6	not prepare the initial draft of these
7	A Yes.	7	minutes?
8	Q So in light of these documents, let	8	A No.
9	me return to the more general question that	9	Q Let me draw your attention to
10	I asked a moment ago.	10	Page 5 of the minutes.
11	Am I correct that in each year in	11	And there's a discussion that
12	which you sent this memo, you continued to	12	begins under the heading with a capital B,
13	use this same language describing	13	says, "Discussion ensued regarding the
14	contributions as a percentage of wages,	14	Fund's seriously endangered status."
15	correct?	15	Do you see that?
16		16	A Yes.
17	A Yes, based on what I reviewed. Q Let's move on and let's move on	17	Q Okay.
18	to Exhibit 136.	18	`
19	And 136 contains the meeting	19	It appears that and I want to try to move this along quickly.
20		20	It appears from the minutes that in
21	minutes for a meeting dated December 20, 2010.	21	connection with this discussion about the
22	Do you see that?	22	Fund's seriously endangered status, at the
23	A Yes.	23	end of that discussion, which is
24	Q And it also indicates on the first	24	characterized as lengthy, the trustees
25	page of the minutes that you attended.	25	requested the Segal representatives to
	page of the influtes that you attended.	-	requested the Segai representatives to
	Page 1250		Page 1251
1	Page 1250	1	Page 1251
1 2	ARBITRATION - VOLUME VI	1 2	ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI provide projections of the Fund's funded	2	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the
	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain	2	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase
2 3 4	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain assumptions.	2 3 4	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase in employer contributions."
2	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain assumptions. Do you see that?	2	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase in employer contributions." Do you see that one?
2 3 4 5 6	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain assumptions. Do you see that? A Yes.	2 3 4 5	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase in employer contributions." Do you see that one? A Yes.
2 3 4 5 6 7	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain assumptions. Do you see that? A Yes. Q Okay.	2 3 4 5 6 7	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase in employer contributions." Do you see that one? A Yes. Q So the first sentence talks about
2 3 4 5 6	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain assumptions. Do you see that? A Yes. Q Okay. Take a moment and why don't you	2 3 4 5	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase in employer contributions." Do you see that one? A Yes. Q So the first sentence talks about modeling based on an assumption that there
2 3 4 5 6 7 8	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain assumptions. Do you see that? A Yes. Q Okay. Take a moment and why don't you read those bullet points that set forth the	2 3 4 5 6 7 8	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase in employer contributions." Do you see that one? A Yes. Q So the first sentence talks about modeling based on an assumption that there would be an increase in employer
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI provide projections of the Fund's funded status taking into consideration certain assumptions. Do you see that? A Yes. Q Okay. Take a moment and why don't you read those bullet points that set forth the assumptions and then I'm going to ask you a couple questions about it. Ready? A Yes. Q So let's take a look at the first bullet. And in the first bullet, the trustees are requesting Segal to do some modeling about Fund's funded status taking into consideration required increases in employer contribution rates. This bullet makes no reference to shifts or a shift rate in describing the employer contribution rates; does it not?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ARBITRATION - VOLUME VI the fifth bullet, the one just up from the bottom. The one that begins, "An increase in employer contributions." Do you see that one? A Yes. Q So the first sentence talks about modeling based on an assumption that there would be an increase in employer contributions of half a million to a million dollars. And then it says, "Based on a reallocation of employer contributions from the Welfare Fund." Do you see that? A Yes. Q So am I correct that in connection with the NMDU Fund, at least during 2010, there was, at that time, a diversion protocol in which a portion of a Pension Fund contributions were diverted to the Welfare Fund? A Yes. Q And in connection with this first

Page 1252 Page 1253 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 contributions from the Welfare Fund back to having less contributions and the diminution 3 3 in Welfare Fund contributions can be offset the Pension Fund, correct? 4 4 Yes. by an increase in the shift rate Α 5 5 O Okav. contribution 6 6 So am I correct that when these Does that appear to be what that 7 7 notes use the word "reallocation" in this minute is addressing? 8 8 bullet point, what they were referring to Α Yes 9 was taking some of the monies that had been 9 And the reference in that sentence 0 10 10 to, quote, "shift rate contribution," that diverted or allocated to the Welfare Fund 11 and reallocating them back to the Pension 11 would be a reference to the Welfare Fund. 12 12 Fund, correct? correct? 13 13 Α Yes A Yes 14 14 And that's because employees make O Now I want to have you focus your O 15 15 attention on the second sentence of that contributions to the Welfare Fund here based 16 16 bullet point, the one that begins, "The on a shift rate, correct? 17 Welfare Fund contribution allocation." 17 Α Yes. 18 18 And that's also because some Do you see that? 19 19 A Yes. employers contribute to the Welfare Fund 20 So I gather that what this minute 20 here, in part, based on a shift rate, 21 21 is referring to is the -- it memorializes a correct? 22 22 trustee observation made at the meeting that Yes Α 23 23 if there is a reallocation from the Welfare 0 Do you know why the minutes in this 24 fifth bullet point specifically referred to 24 Fund back to the Pension Fund, that 25 25 Welfare Fund contributions as shift rate reallocation will result in the Welfare Fund Page 1254 Page 1255 1 1 ARBITRATION - VOLUME VI ARBITRATION - VOLUME VI 2 2 (Requested portion of record read.) contributions, but make no reference to 3 3 shift rates in that first bullet when Here, it's referring to employee. 4 4 describing employer contribution rates to But it doesn't say that? O 5 5 the Pension Fund? No Α 6 6 The method for the Welfare Fund O So let's head to 137. 7 7 So Exhibit 137 contains meeting contribution by the employees, not the 8 8 employer, were based on the shifts worked minutes of a meeting on February 15, 2011. 9 9 And those meeting minutes, again, for all the employees who were eligible for 10 10 benefits under the Welfare Fund. indicate, Mr. Urbank, that you attended and 11 11 let me ask, once again. And this last sentence which refers 12 Do you have any reason to believe 12 to "shift rate contributions," is that 13 13 you did not attend? referring to a shift rate contributions for 14 14 employees and employers? No. Α 15 No. It says "employee." 15 Okay. 0 Α 16 16 No, it doesn't. It does not in And you'll see that following the 17 17 that sentence, that's why I'm asking you the four pages of minutes, there's a copy of a 18 18 PowerPoint presentation, what appears to be question. 19 19 a PowerPoint presentation. A Okay. Sorry. 20 20 Do you know the answer to that Do you see that? 0 21 21 Yes. question? Α 22 22 And am I correct that this A I'm sorry, can you repeat the 0 23 23 question? PowerPoint presentation was handed out and 24 24 discussed at this February 15, 2011 meeting? MR. MILLER: Can you repeat the 25 25 Yes. question back? Α

		1	
	Page 1256		Page 1257
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	Q And why don't you turn to, I guess	2	MR. MILLER: Why? I'm allowed
3	it would be PowerPoint Slide 4, which is at	3	to ask him
4	FUND-03370.	4	MR. RICHMAN: No, you ask one
5	Do you see that?	5	question at a time, then you stop and
6	A Yes.	6	then the person answers it before he
7	Q And there's reference to the	7	says yes or no.
8	initials CR.	8	ARBITRATOR IRVINGS: It's fine.
9	That would be contribution rate,	9	It called for a yes or no answer.
10	right? That would be an abbreviation for	10	Let's move on.
11	the words "contribution rate"?	11	BY MR. MILLER:
12	A Yes.	12	Q Why don't we turn
13	Q So am I correct that this slide	13	MR. RICHMAN: The reason I'm
14	discusses a possible funding improvement	14	sorry. The reason I raise that is
15	plan option in which the contribution rate	15	that the witness has a right to
16	for the NMDU Pension Fund would move from	16	answer other than yes or no.
17	8 percent, it says, of wages increasing to	17	MR. MILLER: No, he doesn't.
18	11.5 percent.	18	If he's asked a yes or no question,
19	Am I correct?	19	he needs to answer that yes or no
20	A Yes.	20	and
21	Q Does anything on this slide mention	21	ARBITRATOR IRVINGS: Let's move
22	shift numbers or a shift rate? Yes or no?	22	on.
23	A No.	23	BY MR. MILLER:
24	MR. RICHMAN: The yes or no	24	Q Turn your attention to FUND-03378.
25	stuff really should stop.	25	And here, in connection with
I	Dawa 1250		Daga 1250
	Page 1258		Page 1259
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI scenarios 2 and 3 for, again, a possible	2	ARBITRATION - VOLUME VI minutes that you attended, and I assume you
2	ARBITRATION - VOLUME VI scenarios 2 and 3 for, again, a possible funding improvement plan, there is, once	2	ARBITRATION - VOLUME VI minutes that you attended, and I assume you have no reason to believe you were not in
2 3 4	ARBITRATION - VOLUME VI scenarios 2 and 3 for, again, a possible funding improvement plan, there is, once again, a reference to an 8 percent	2 3 4	ARBITRATION - VOLUME VI minutes that you attended, and I assume you have no reason to believe you were not in attendance?
2 3 4 5	ARBITRATION - VOLUME VI scenarios 2 and 3 for, again, a possible funding improvement plan, there is, once again, a reference to an 8 percent contribution rate increasing to, in one	2 3 4 5	ARBITRATION - VOLUME VI minutes that you attended, and I assume you have no reason to believe you were not in attendance? A Correct.
2 3 4 5 6	ARBITRATION - VOLUME VI scenarios 2 and 3 for, again, a possible funding improvement plan, there is, once again, a reference to an 8 percent contribution rate increasing to, in one case, 10 percent and in another case to	2 3 4 5 6	ARBITRATION - VOLUME VI minutes that you attended, and I assume you have no reason to believe you were not in attendance? A Correct. Q And you'll see that Pages 1, 2 and
2 3 4 5 6 7	ARBITRATION - VOLUME VI scenarios 2 and 3 for, again, a possible funding improvement plan, there is, once again, a reference to an 8 percent contribution rate increasing to, in one case, 10 percent and in another case to 9 percent, correct?	2 3 4 5 6 7	ARBITRATION - VOLUME VI minutes that you attended, and I assume you have no reason to believe you were not in attendance? A Correct. Q And you'll see that Pages 1, 2 and 3 are primarily devoted to a discussion of a
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	Page 1260		Page 1261
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	A Yes.	2	that at that meeting, you did not refer to
3	Q And am I correct that these notes	3	the contribution rate as a percentage?
4	refer to a discussion and advice that you	4	A No.
5	provided to the trustees at this meeting	5	MR. RICHMAN: He just said yes.
6	about the mandatory or required schedules	6	ARBITRATOR IRVINGS: Thank you.
7	under the law relating to a funding	7	BY MR. MILLER:
8	improvement plan?	8	Q All right. Let's move to
9	A Yes.	9	Exhibit A.
10	Q Okay.	10	So I take it, this is a revised
11	And furthermore, at the very bottom	11	version of the PowerPoint presentation we
12	of that paragraph, there is mention of two	12	previously looked at.
13	funding improvement plan proposals in which	13	And this revised version was
14	it says, "The employer contribution rate	14	discussed at the April 6, 2011 meeting,
15	would be increased from 8 percent to	15	correct?
16	12.4 percent in one proposal and from 8 to	16	A Yes.
17	13.6 percent in the other proposal."	17	Q Okay.
18	Do you see that?	18	And if you take a look at, again,
19	A Yes.	19	Slide 4 and probably Slide 12 not
20	Q So am I correct that these minutes	20	Slide 12 just Slide 4 in this case, it,
21	indicate that during the meeting with the	21	again, uses the phrase "8 percent CR" where
22	trustees, you referred to the employer	22	"CR" means contribution rate, correct?
23	contribution rate as a percentage, correct?	23	A Yes.
24	A Yes.	24	Q Okay.
25	Q Do you have any reason to believe	25	This PowerPoint presentation which
	Q Do you have any reason to believe		This I owell only presentation which
	Page 1262		Page 1263
1	Page 1262 ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
1 2		1 2	_
	ARBITRATION - VOLUME VI		ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI we looked at now two iterations of, this PowerPoint presentation was continuously	2	ARBITRATION - VOLUME VI the word "routine."
2 3 4 5	ARBITRATION - VOLUME VI we looked at now two iterations of, this	2	ARBITRATION - VOLUME VI the word "routine." THE REPORTER: Hit the "Follow"
2 3 4	ARBITRATION - VOLUME VI we looked at now two iterations of, this PowerPoint presentation was continuously edited and we presented to the trustees during the course of 2011, correct? And if you need to why don't you	2 3 4	ARBITRATION - VOLUME VI the word "routine." THE REPORTER: Hit the "Follow" icon on the right side, will take you to the end. MR. MILLER: Oh, I see. Okay.
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2 3 4 5 6	ARBITRATION - VOLUME VI we looked at now two iterations of, this PowerPoint presentation was continuously edited and we presented to the trustees during the course of 2011, correct? And if you need to why don't you	2 3 4 5	ARBITRATION - VOLUME VI the word "routine." THE REPORTER: Hit the "Follow" icon on the right side, will take you to the end. MR. MILLER: Oh, I see. Okay.
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	Page 1264		Page 1265
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	A No.	2	many.
3	Q And in communicating the material	3	Q Okay.
4	on these PowerPoint presentations to the	4	Was it the subject of much
5	trustees, you used the same language and	5	discussion at many meetings?
6	terminology that you employed in the	6	A It was discussed at the meetings.
7	PowerPoint presentation itself, correct?	7	Q At numerous meetings?
8	A In what context?	8	A Over the course of six years, it
9	Q Well, let me ask that question more	9	was discussed at many meetings during that
10	clearly.	10	period.
11	You discussed these PowerPoint	11	Q Okay.
12	presentations with the trustees, correct?	12	MR. MILLER: I have no further
13	A Yes, at meetings.	13	questions.
14	Q And in doing so, you used the same	14	MR. RICHMAN: I think it makes
15	terminology that's contained in the	15	sense not to break for lunch.
16	PowerPoint presentations, correct?	16	MR. MILLER: No, I agree.
17	A Yes.	17	ARBITRATOR IRVINGS: I agree.
18	Q The Pension Protection Act was, I	18	FURTHER DIRECT EXAMINATION BY MR. RICHMAN:
19	think, enacted in 2006.	19	Q So you testified previously that
20	Is it fair to say that the Pension	20	contribution base units were shifts both in
21	Protection Act was discussed at many	21	a prior proceeding and today.
22	meetings of the NMDU Fund between 2006 and	22	And is that still your
23	when Segal's engagement with this fund	23	understanding how the Pension Fund works?
24	concluded?	24	A Yes.
25	A It was discussed. I don't know how	25	Q Now I want to show you Exhibit 42.
	Page 1266		Page 1267
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	White book.	2	night, Saturday night."
3	You got 42 in front of you?	3	Do you know what those are?
4	A 42.	4	A They're different shift periods.
5	Q All right.	5	Q Okay.
6	So the first page, which is 2370?	6	And do all the shifts have the same
7	A Yes.	7	number of hours?
8	Q So there's a cover page.	8	A I don't know.
9	Do you see that?	9	Q I want to show you Exhibit 150. So
10	A Yes.	10	let's look at 150, Exhibit 150, and that is
11	Q Okay.	11	in the yellow book, I believe.
12	And then behind it, if you just	12	Do you see that?
13	take a quick look. I'm not asking you to	13	A Okay.
14	read it. Just take a quick look.	14	Q Now
15	You received this document?	15	A I have a different 150.
16	A Yes.	16	Q I'm sorry. Yes. Okay.
17	Q And I want to focus you on the	17	So look in 150, these are minutes
18	let's look at Page 2371.	18	of the January 31, 2014
19	You got that page?	19	ARBITRATOR IRVINGS: January 20
20	A Yes.	20	
21	Q And you see under the heading	21	MR. MILLER: January 31 no,
22	Effective 3-31-2013.	22	we have a different one.
	Do you see that?	23	ARBITRATOR IRVINGS: We have a
23			
24	And if you see on the left-hand	24	different one.
		24 25	

	Page 1268		Page 1269
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	Q Sorry. June 20, 2014, trustees	2	documents as they were changed from time to
3	meeting.	3	time. And the phrase "shift rate" wasn't in
4	Do you see that first page?	4	those documents, correct?
5	A Yes.	5	A Correct.
6	Q And then what I'm focused on is go	6	Q But it's in this document, and why
7	to Page 3437 on the bottom right-hand	7	is that?
8	corner. That's Exhibit A.	8	A Here, we were just clarifying what
9	A Oh, yes.	9	the contribution basis was.
10	Q Okay.	10	Q And why were you clarifying this?
11	Now, you see in a sentence that in	11	A Just for clarification purposes so
12	the left-hand margin begins, "May 31, 2025,"	12	everybody was fully aware.
13	or a line that begins "May 31, 2025 "?	13	Q Okay.
14	Do you see that?	14	Well, the date of the document is
15	A Yes.	15	April 14, 2014.
16	Q Okay.	16	A Uh-huh.
17	And then the next sentence says,	17	Q 3437, right?
18	"Assuming that all employers will adopt the	18	Is that before or after The New
19	alternative schedule; i.e, the distribution	19	York Times withdrew from the Fund?
20	rate increases from 8 percent to	20	A The withdrawal liability was prior
21	11.8 percent of the shift rate when the new	21	to that.
22	collective bargaining agreements	22	Q And so why were you using the term
23	negotiated " And then it goes on.	23	"shift rate" in this document and you hadn't
24	And Mr. Miller took you through	24	used it in the Funding improvement plan
25	various documents, funding improvement plan	25	document?
	Page 1270		Page 1271
1	Page 1270	1	Page 1271
1	ARBITRATION - VOLUME VI	1	ARBITRATION - VOLUME VI
2	ARBITRATION - VOLUME VI A Just to clarify what the	2	ARBITRATION - VOLUME VI asking him about the state of someone
2 3	ARBITRATION - VOLUME VI A Just to clarify what the contribution basis was.	2	ARBITRATION - VOLUME VI asking him about the state of someone else's mind
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2 3 4 5 6 7	ARBITRATION - VOLUME VI A Just to clarify what the contribution basis was. Q And why did you feel the need to clarify it? A Because there was some misunderstanding going on related to	2 3 4 5 6 7	ARBITRATION - VOLUME VI asking him about the state of someone else's mind MR. RICHMAN: That's fine. BY MR. RICHMAN: Q In the various documents that Mr. Miller took you through and it said
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1
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ARBITRATION - VOLUME VI meeting, regardless of what it said on the agenda, order of the agenda. Q Okay. And then as I understand it, you send your notes to the Fund director, correct, Mr. Schwartz? A Yes. And counsel. Q And counsel. Okay. And that counsel was Mr. Schelberg? A Yes. Q Okay. And then they make comments on the draft that you did, correct? A They return them to me with their edits. Q And when you did the draft minutes, did the draft minutes follow the order of the meeting? A Yes. Q Okay. And do you recall any situation in which you got back minutes as edited by
Mr. Schelberg or the Fund administrator where they changed the order of your draft
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ARBITRATION - VOLUME VI minute. (Pause.) MR. MILLER: We have no further questions. ARBITRATOR IRVINGS: Excellent. (Whereupon, the proceedings had concluded at 1:15 p.m.)

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1	ARBITRATION - VOLUME VI	¹ ARBITRATION - VOLUME VI
2	CERTIFICATE	2 INDEX
3	STATE OF NEW YORK)	3
4	: ss. COUNTY OF NEW YORK)	4 WITNESS: PAGE
5	I, BARBARA R. ZELTMAN, Shorthand	5 NEAL SCHELBERG
6	Reporter and Notary Public, within and	6
7	for the State of New York, do hereby	Direct Examination by Mr. Richman 1170
8	certify:	8 Cross Examination by Mr. Miller 1203
9	That this transcript is a true	Further Direct Examination by Mr. Richman 1207
10	record of the proceedings had.	Further Cross Examination by Mr. Miller 1209
11	I further certify that I am not	Further Direct Examination by Mr. Richman 1265
12 13	related to any of the parties to this	12
14	action by blood or marriage, and that I am in no way interested in the outcome of	13
15	this matter.	14
16	IN WITNESS WHEREOF, I have hereunto	15
17	set my hand this 19th day of October,	16
18	2015.	17
19		18
20		19
21	BARBARA R. ZELTMAN	20
	Court Reporter and Notary Public	21
22	Court Reporter and Notary Fublic	22
23		23
24		24
25		25